

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 9, 2009

Re: TABOR NOW's Request to Investigate the City of South Portland

On October 14, 2009, the Commission received the attached e-mail request from David Crocker of the TABOR NOW campaign requesting that the Commission investigate whether the City of South Portland has complied with Maine's campaign finance laws. TABOR NOW asks the Commission to consider whether South Portland was required to register with the Commission as a ballot question committee and to file campaign finance reports because of costs associated with a one-page flier (attached) that the City of South Portland included in an October 2009 mailing of property tax bills. Mr. Crocker asserts that it is likely that the expenditures for the flier exceeded \$5,000 and were incurred for the purpose of opposing the TABOR II and excise tax initiatives that were on the state-wide ballot November 3, 2009.

On October 20, 2009, I informed the South Portland City Manager, James H. Gailey, of the request by TABOR NOW and requested some preliminary information. The Corporation Counsel for the City of South Portland is Sally J. Daggett, an attorney at the law firm of Jensen, Baird, Gardner & Henry. On October 29, 2009, she submitted a letter on behalf of the City. Daniel I. Billings and David Crocker submitted letters dated

November 5 and 6, 2009, respectively, urging the Commission to undertake an investigation. Although Mr. Billings is an attorney, he has clarified to me by e-mail that his letter was submitted on behalf of himself, not TABOR NOW.

Factual Background

In October, the City of South Portland included in a property tax mailing a one-page flier concerning the TABOR II and excise tax initiatives. The flier

- informed property-owners that the City Council had voted to oppose both initiatives,
- provided some limited information about the effects of the initiatives if they were enacted, including the loss of \$1.9 million in revenue to the City during the current fiscal year, and
- encouraged property-owners to learn more about both initiatives at the City's website.

The flier did not explicitly urge a "no" vote on the initiatives. The statements in the letter were factual, rather than opinion. The only explicit direction to recipients in the flier was to learn more about the initiatives at the City's website.

Nevertheless, the flier contained language that could indicate a purpose to influence South Portland residents to vote against the TABOR II and excise tax initiatives. In the context of stating the City Council's vote on both initiatives, the word "oppose" was typed in capital letters and was further emphasized with boldface type, italics, and underlining. Also, the letter stated the amount of tax revenue the City would lose if the automobile excise tax initiative were enacted.

The flier refers to votes taken by the South Portland City Council to oppose both initiatives. According to the City's website, the City Council held a workshop on September 14 to discuss both initiatives, and held a second workshop on September 28th to discuss the TABOR II initiative. The members of the City Council passed resolves opposing the excise tax and TABOR II initiatives at their regular meetings on September 21 and October 5, respectively. Among the materials posted on the City's website were short position papers (one to three pages) and resolutions prepared by the City Manager, James H. Gailey. Apparently, more lengthy analyses of the initiatives were also made available at the workshops and meetings, including materials prepared by nonprofit organizations such as the Maine Heritage Policy Center, which wrote both initiatives, and the Maine Municipal Association.

Standards for Considering Requests for Investigation

Any person may request that the Commission investigate compliance with Maine's campaign finance reporting requirements:

2. Investigations requested. A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred. (21-A M.R.S.A. § 1003(2))

The Commission is required to consider the request, and must make an investigation if sufficient grounds have been shown for believing that a violation "may have occurred."

(*Id.*)

Ballot Question Committee Reporting Statute

Under 21-A M.R.S.A. § 1056-B, an organization qualifies as a ballot question committee as follows:

Ballot question committees. Any person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file reports with the commission in accordance with this section. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. ...

Ballot question committees are required to register with the Commission and to file campaign finance reports according to a prescribed schedule. (*Id.*) The statute makes clear that reporting includes “paid staff time spent for the purpose of influencing in any way a ballot question.” (*Id.*)

Threshold Legal Question

The Commission’s counsel and I believe that TABOR NOW’s request presents a threshold legal question of whether the ballot question committee reporting statute (21-A M.R.S.A. § 1056-B) could apply to a municipality. The statute applies to “[a]ny person not defined as a political action committee who receives contributions or makes expenditures” The term “person” is defined at the beginning of the state’s campaign finance disclosure law as:

"Person" means an individual, committee, firm, partnership, corporation, association or organization. (21-A M.R.S.A. § 1001(3))

The definition does not contain the classification of “municipality” or other type of governmental entity.

In contrast, in the lobbyist disclosure law (also administered by the Commission) the Legislature explicitly defined the term “person” to include municipalities:

12. Person. "Person" means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert, but does not include this State or any other agency of this State. (3 M.R.S.A. § 312-A)

Thus, if a municipality pays an employee or outside consultant or lawyer for more than eight hours of lobbying in a calendar month, the municipality is required to register with the Commission as having hired a lobbyist and must jointly file monthly disclosure reports.

In the view of the Commission staff, the applicability of 21-A M.R.S.A. § 1056-B to the City of South Portland turns on whether the City would be considered a “corporation” or an “organization.” In their letters dated November 5 and 6, Dan Billings and David Crocker express the view that the City of South Portland is a corporation for purposes of the reporting statute. They note that historically, towns and cities have been referred to as municipal corporations or as a “body corporate,” and that Article 1, Section 1 of the Charter of South Portland contains this concept.

In the view of the staff, this is not dispositive. The more common usage of the term “corporation” is to refer to private business or nonprofit entities incorporated under Titles

13-B and 13-C of the Maine Revised Statutes. The position of the term “corporation” in the definition of person after “firm” and “partnership” may indicate that the Legislature intended “corporation” to refer to business entities, and not towns and cities.

The City of South Portland has offered a legislative history of the term “person” in the campaign finance reporting law. (Daggett Letter, at 1-2) I have looked quickly at the development of the law as well, and the history is confusing because of the frequent revisions to the law in the 1970s and 1980s. In case you wish to review the history in detail, I have attached to this memorandum the relevant public laws referred to by Ms. Daggett and a few additional laws that I have included to provide greater context. I have also included my own description of the history as an appendix to this memorandum. Please be aware that, due to time constraints, my review of the legislative history has been confined to reading the statutory changes alone, and I have not reviewed other materials such as floor debates in the Legislature or testimony or analysis presented at committee.

In summary, from 1973 to 1985 the Election Law (Title 21) contained successive statutes that explicitly required a “governmental agency” to file reports with the state government if it spent money to support or oppose a direct initiative. By the end of this period (1985), Maine’s campaign finance law consisted of three different chapters of the Election Law (Chapters 35, 35-A, and 38). Each of these chapters contained their own definition of “person.” (21 M.R.S.A. §§ 1392(5), 1412(5), 1552(6)) The definition of

person in Chapter 35-A contained the phrase “governmental agency,” whereas the definition of person in the other two chapters did not.

In 1985, the Legislature re-codified the Election Law as Title 21-A, and brought the three chapters into a single Campaign Reports and Finances Law (Chapter 13). As part of that recodification, it consolidated the three definitions of “person” into a single definition in 21-A M.R.S.A. § 1001(3)) that did not include the phrase “governmental agency.”

The City of South Portland concludes that “the Legislature knows how to include governmental agencies within the scope of the campaign finance reporting requirements of Maine law when it wants to, but it has chosen not to do so at present.” (Daggett Letter, at 2) Based on the 1985 elimination of the term “governmental agency,” the Commission staff agrees that this is a reasonable interpretation of the overall legislative history.

Dan Billings points out the difficulties in interpreting legislative history. He argues that the Commission should not consider the legislative history because of the plain meaning of the term “corporation” within the definition of “person.” (Billings letter, at 1) David Crocker also believes it is unnecessary to consider the legislative history. (Crocker 11/6/09 letter, at 2) The staff does not agree that the plain meaning of “corporation” includes a municipality and believes that it is appropriate to look to the legislative history as a guide to interpreting the current language.

Factual Argument by South Portland: the Mailing Cost Less than \$5,000

In Sally Daggett's October 29, 2009 letter, the City of South Portland states that the total cost of including the one-page flier in the tax bill mailing was \$622.11.

Cost of preparing the flier. The City states that it cost \$59.67 in staff time to prepare the flier. Ms. Daggett elaborated to me that this constitutes one hour of time spent by City Manager James H. Gailey.

Cost of producing the fliers. The City states that the production cost of the one-page insert was \$562.44, which represents 9,374 inserts at a cost of 6¢ each. Ms. Daggett told me that the per-unit cost of six cents included the cost of photocopying and of folding the insert. When I asked her about the cost of inserting the flyer in envelopes, she replied that she would check with her client, and that Mr. Gailey could address the issue at the November 19th meeting.

Dan Billings argues that since the City charges 25¢ per page for photocopying records provided in response to requests under the Freedom of Access Act (FOAA), that same photocopying cost should be applied toward the \$5,000 threshold for campaign finance reporting. Public entities are entitled to charge a "reasonable fee for the cost of photocopying" performed to respond to a FOAA request. (1 M.R.S.A. § 408(3)(A)) My general understanding is that it is not unusual for public agencies to charge a photocopying fee for FOAA responses that exceeds the agency's actual cost. For

purposes of the \$5,000 threshold in 21-A M.R.S.A. § 1056-B, the Commission staff believes that the City's *actual* cost in photocopying the flier is the appropriate measure.

Mailing costs. The City states that it sends tax bills quarterly, and that the inclusion of the one-page flier did not increase the cost of the postage. Accordingly, it states that there was no incremental postage cost for including the fliers in the mailing.

In response, Mr. Billings raises the point that “[i]f only incremental costs were to be considered [for purposes of campaign finance reporting], organizations and businesses could include campaign materials of various kinds in mailings that were already planned and avoid campaign finance reporting as a result.” (Billings letter, at 2) The Commission staff believes that Mr. Billing’s point is valid as a general policy. One of the Commission’s responsibilities in candidate elections is to pay matching funds to candidates participating in the Maine Clean Election Act based on communications to voters distributed by organizations independently of the candidates in the race. If the Commission were to adopt the general policy that there was zero postage when literature relating to a candidate was inserted in a planned mailing (*e.g.*, an employer’s distribution of paychecks), that policy could decrease the reporting of campaign expenditures and could impact the payment of matching funds.

Dan Billings argues that one-half of the cost of the October property tax mailing should be allocated to opposing TABOR II and the excise tax initiatives. He calculates that if

the mailing cost is 44¢ per piece, and the cost of 22¢ is allocated to each of the 9,374 pieces mailed, then the expenditure on postage to oppose the initiatives was \$2,062.28.

The Commission staff believes the Commission has discretion whether or not to allocate one-half of the postage cost of the mailing in determining whether the City met the \$5,000 threshold. While consistency is important, the valuation of postage in this case would not necessarily create a precedent for all circumstances.

The actual cost of the mailing may be lower than 44¢ per piece if the City was able to obtain bulk mailing rates. For example, when an agency of the state government sends a mailing of more than 200 pieces, the U.S. Post Office charges the State of Maine a bulk rate of \$0.256 per piece (25 cents plus six-tenths of a cent). Ms. Daggett informed me that she would inquire with the City Manager whether the October property tax mailing was sent by bulk rate. If, for example, the City of South Portland were charged the rate of \$0.256 per piece and one-half of that charge were attributed to the flier, I calculate that the cost of postage for the flier would be \$1,199.87.

Drafting of Resolutions by City Manager. David Crocker and Dan Billings suggest that the cost of the City Manager in preparing the resolution and to prepare information for consideration by the City Council should count toward the \$5,000 threshold. Mr. Billings also suggests that the “Commission should consider whether City staff attended any meetings or events concerning the referendum while on City time.” (Billings letter, at 3)

The Commission staff does not view the time spent by the City Manager in preparing his position papers and resolutions as part of the mailing. A number of municipalities adopted resolutions in 2009 opposing TABOR II or the excise tax initiatives, and did not send mailings. Since enactment of these initiatives would have had a significant effect on the City's available revenue and spending limits, one would expect it to be within the scope of the City Manager's job responsibilities to develop and present his analysis to the Council and to the public. The time spent by the City Manager or other employees at the September-October workshops and meetings could be viewed as activities to educate and inform public officials and their constituents regarding the potential fiscal impacts of the initiative, rather than as an expenditure to defeat the initiatives.

Purpose of Mailing – Advocating a “No” Vote or Disseminating Information?

An expenditure only counts toward the \$5,000 spending threshold in 21-A M.R.S.A. § 1056-B if the expenditures was made “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question.” TABOR NOW presumes that the purpose of the insert was to defeat the initiatives.

The City of South Portland did not address in Ms. Daggett's letter whether the City's purpose in distributing the flier was to defeat the initiatives. Nevertheless, the City may take the view that the purpose was to disseminate information to voters about the impact of the initiatives and to encourage them to find out more information at the City's website. Based on reporting in the press, it appears that a number of municipalities in

Maine decided that they had an appropriate role – if not a duty – to examine the impact of the TABOR II and excise tax initiatives and to provide that information to voters.

This educational role was recognized in the attached September 10, 2004 advisory opinion by the Maine Attorney General, which relied upon a 1991 decision of the Maine Superior Court, *Campaign for Sensible Transportation v. Maine Turnpike Authority*, Docket No. CV-91-952 (Me. Super. Ct., Cum. Cty., October 8, 1991) (Alexander, J.), 1991 Me. Super. LEXIS 228, *app. dismissed as moot*, 658 A.2d 213 (Me. 1995). In the decision, the Attorney General concluded that while governmental officials could not spend public funds for partisan advocacy without express authorization, it is an appropriate governmental function to analyze the effects of legislation and to disseminate information concerning an initiative and its impact. Op. Me. Att’y Gen. (September 10, 2004), at 4.

Recommendation by Commission Staff

The Commission staff recommends not conducting any further investigation of this matter, because TABOR NOW has not submitted sufficient evidence to show that a violation may have occurred.

Even if the Commission is inclined to conclude that 21-A M.R.S.A. § 1056-B could apply to a municipality, it does not appear that the City of South Portland exceeded the \$5,000 spending threshold. If the Commission decides to attribute one-half of the cost of the mailing to defeating the initiatives, that half-share would be in the range of \$1,199 (at

\$0.256 per piece) to \$2,062.28 (at 44¢ per piece). In the view of the Commission staff, the other possible expenses associated with the flier were:

- drafting the content of the flier (estimated by the City as \$59.67),
- producing the 9,374 fliers (stated by the City to be \$562.44), and
- any staff time spent stuffing envelopes or on other activities to get the flier ready for the U.S. mail (unknown at this time).

It seems unlikely that these costs are going to be in the range of \$3,000 to \$4,000, which would be necessary for the City's costs to exceed the \$5,000 threshold.

Second, it is not at all clear that the Legislature intended the term "person" to refer to municipalities. The absence of any reference to municipalities or "governmental agencies" in the current definition of person (21-A M.R.S.A. § 1001(3)) suggests otherwise. While the legislative history does not offer any definite guidance, it supports the view that the Legislature eliminated the explicit requirement for governmental entities to report in 1985.

The policy question of whether municipalities must file campaign finance reports with the Commission is a *major* policy decision that should be made by the Legislature, not the Commission. It is closely related to the difficult policy issue of what is the proper role of municipalities in spending staff time to educate and inform their voters regarding the effects of a statewide initiative or referendum – a topic which is outside the purview of the Commission.

One practical concern I would have about extending campaign finance reporting to municipalities is that it could involve the Commission in very thorny factual determinations concerning the purpose of municipal officials in performing activities concerning initiatives and referenda. The Commission could be called upon to parse statements made by governmental officials at public meetings, or to divine the purpose of a town employee in preparing a legislative analysis or in convening an internal staff meeting to discuss an initiative. As noted by the Maine Attorney General on page 4 of the September 10, 2004 opinion, it can be very difficult to draw the line between legitimate municipal functions (analysis, planning, and education) and electioneering. The Commission staff has doubts whether the Legislature contemplated that the Commission would have this kind of oversight role over municipalities, which are subdivisions of the state.

Some advocates may believe this is an appropriate role for the Commission as the campaign finance agency of the state, because the disclosure would provide the public with a greater understanding of how public agencies are influencing elections and the amount of tax dollars that are spent by those agencies. I understand the logic of these public policy arguments, and the staff would willingly accept those responsibilities if they are assigned by the Legislature. Given the practical challenges of those types of determinations and the potential for interference in legitimate municipal functions, however, I would suggest not volunteering for that role without clearer direction from the Legislature.

Thank you for considering the recommendation of the Commission staff. We are ready to take on any fact-gathering or other project you would like in connection with this matter.

Appendix

Legislative History of Ballot Question Reporting in Maine Campaign Finance Law

In 1973, the Legislature first adopted a statute within the Election Law (Title 21) that required entities that were spending money to influence initiatives or referenda to file campaign finance reports. (P.L. 1973, Ch. 591) The new statute was inserted within Chapter 35, which primarily pertained to campaign finance reporting concerning *candidate* elections. The new statute (21 M.R.S.A. § 1391-A) required “any person, corporation, public or private utility, association, *governmental agency* or political committee accepting or expending money, to initiate, promote or defeat [initiatives and referenda]” to file campaign finance reports with the Secretary of State (emphasis added). Thus, when ballot question reporting was initiated in Maine, the Legislature did intend governmental entities to file reports.

In 1975, the Legislature enacted legislation creating the Commission and assigned to the Commission the task of receiving campaign finance reports. (P.L. 1975, Ch. 621) As part of that legislation, the entire Chapter 35 of the Election Law (Title 21) was repealed and replaced. In the process, former § 1391-A was renumbered as § 1392 and was amended slightly.

In 1976, the Legislature again repealed and replaced Chapter 35 of the Election Law, in response to the U.S. Supreme Court’s ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976). (P.L. 1975, Ch. 759) It created a new § 1392, which was a definitions section for Chapter 35. The definition of “person” was introduced in § 1392(5) to mean “an individual,

committee, firm, partnership, corporation, association or any other group or organization of persons.” As noted by Ms. Daggett, this definition of “person” in Chapter 35 did not contain an express reference to governmental agencies. As part of the new Chapter 35, the Legislature moved the ballot question reporting section from § 1392 to § 1397(3). This subsection required “*any person, public utility or governmental agency*” to file reports if they spent more than \$50 to initiate, promote, or defeat an initiative or referendum. (Emphasis added) The addition of the term “governmental agency” here suggests that the Legislature did not consider such agencies to be covered within the definition of “person” in the new § 1392(5).

In 1977, the Legislature introduced a new Chapter 35-A in the Election Law which pertained to campaign finance reporting of financial activity to influence *ballot questions*. (P.L. 1977, Ch. 575). The new Chapter 35-A was entitled “Reports on Referendum Campaigns.” (Chapter 35 was entitled “Campaign Reports and Finances,” but at this point its provisions related only to candidate elections.) Chapter 35-A contained new definitions that were different from the definitions in Chapter 35. The definition of “person” in Chapter 35-A added the words “public utility” and “governmental agency” to the list included in the Chapter 35 definition of “person.” (21 M.R.S.A. § 1412(5)) Because of this definition, governmental agencies continued to be required to file reports with the Commission if they spent more than \$50 with respect to a ballot question. (§ 1413(1))

In 1983, the Legislature enacted the first PAC statute as a new Chapter 38, entitled Reports by Political Action Committees. (P.L. 1983, Ch. 365) The definition of “person” in Chapter 38 was identical to that contained in Chapter 35 pertaining to candidate elections and thus did not include any specific reference to governmental agencies (21 M.R.S.A. § 1552(6)).

In 1985, the Legislature recodified the entire Election Law as Title 21-A. (P.L. 1985, Ch. 161). The Legislature retained Chapters 35, 35-A and Chapter 38 and recodified them as subchapters 2, 3, and 4, of Chapter 13 of Title 21-A. This recodification consolidated the definitions of “person” that existed in Chapters 35, 35-A, and 38 into a single definition of person in 21-A M.R.S.A. § 1001(3), with nearly the same wording previously used in Chapters 35 and 38.¹ This new definition did not contain the term “governmental agency.”

The definition of “person” in 21-A M.R.S.A. § 1001(3) remained the same from 1985 until 2007, when the Legislature deleted the word “group” in legislation that was proposed by the Commission. (P.L. 2007, Ch. 443.) No changes have been made to the definition since 2007.

¹ The only difference was in the last phrase. The new 21-A M.R.S.A. § 1001(3) defined “person” to mean “an individual, committee, firm, partnership, corporation, association, *group or organization*,” whereas Chapters 35 and 38 defined “person” to mean “an individual, committee, firm, partnership, corporation, association *or any other group or organization of persons*.” (Emphasis added)

21-A MRSA § 1056-B. BALLOT QUESTION COMMITTEES

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address of each contributor, payee or creditor. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a ballot question;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for one year following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

Wayne, Jonathan

From: David P. Crocker [dpc@davidcrocker.com]
Sent: Wednesday, October 14, 2009 3:58 PM
To: Wayne, Jonathan
Subject: South Portland Mailer

Attachments: South Portland property tax insert.pdf



South Portland
property tax in...

Jonathan:

The attached mailer has come to our attention: South Portland has sent it out to every property taxpayer with their property tax bills. We'd like the Ethics Commission to investigate.

It's hard to believe that the production cost and postage to send a letter to all property taxpayers in South Portland, along with the staff time spent drafting the council's resolution, would not exceed the \$5,000 threshold for a Ballot Question Committee.

Thanks for your help with this matter.

Regards,

David P. Crocker
Attorney and Counselor at Law
Solicitor of England and Wales
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November Election

On November 3rd, voters will be asked to vote on a number of Referendum Questions. In particular Question #2 Motor Vehicle Excise Tax and Question #4 TABOR II and how they will affect the City of South Portland.

The South Portland City Council has voted to “**OPPOSE**” both referendums.

Question #2

“Do you want to cut the rate of the municipal excise tax by an average of 55% on motor vehicles less than six years old and exempt hybrid and other alternative-energy and highly fuel-efficient motor vehicles from sales tax and three years of excise tax?”

- ❖ South Portland stands to lose 1.9 million in revenue per year if this initiative passes.
 - ❖ If the auto excise tax initiative passes, the reductions go into effect in the middle of the current budget year (January/February 2010).
-

Question #4

“Do you want to change the existing formulas that limit state and local government spending and require voter approval by referendum for spending over those limits and for increases in state taxes?”

- ❖ TABOR II is a revised version of TABOR I, which Maine voters defeated in 2006.
 - ❖ TABOR II mandates a community-wide referendum for approving the municipal annual budget in certain circumstances.
-

Please take the time to learn more about both initiatives at:

www.southportland.org



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 20, 2009

James H. Gailey, City Manager
City of South Portland
P.O. Box 9422
South Portland, Maine 04106

Dear Mr. Gailey:

The Maine Commission on Governmental Ethics and Election Practices has received the attached request from David Crocker of the TABOR NOW campaign that the Commission investigate whether the City of South Portland has complied with Maine's campaign finance laws. Specifically, TABOR NOW requests that the Commission consider whether South Portland was required to register with the Commission as a ballot question committee and to file campaign finance reports because of expenditures made to oppose two direct initiatives on the November 3, 2009 ballot. The members of the Commission are required by statute to consider TABOR NOW's request – at least preliminarily – at a public meeting. (21-A M.R.S.A. § 1003(2))

This letter is intended to

- notify you that this matter has been scheduled for preliminary consideration by the Commission;
- provide you with legal background on TABOR NOW's request; and
- invite the City of South Portland to provide a written response no later than Friday, October 30, 2009.

Commission's Consideration of this Matter

The Commission will consider the request at its meeting on November 19, 2009 at 9:00 a.m. in Room 208 of the Cross Office Building, 111 Sewall Street in Augusta. At that time, I anticipate that the Commission will give this matter preliminary consideration (*i.e.*, consider whether the campaign finance reporting statute potentially could apply to a municipality, and consider any information the City provides in response to this letter). The Commissioners may decide on November 19 to gather more factual information concerning the mailing.

State Campaign Finance Reporting Statutes

Under 21-A M.R.S.A. § 1056-B, an organization qualifies as a ballot question committee as follows:

Ballot Question Committees. Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission

Organizations which spend \$5,000 or less to oppose a ballot question do not qualify as ballot question committees. Ballot question committees are required to register with the Commission and to file campaign finance reports according to a prescribed schedule. (*Id.*) The statute makes clear that reporting include "paid staff time spent for the purpose of influencing in any way a ballot question." (*Id.*)

The term 'person' is defined at the beginning of the state's campaign finance disclosure law as:

"Person" means an individual, committee, firm, partnership, corporation, association or organization. (21-A M.R.S.A. § 1001(3))

After consulting with the Commission's Counsel, the staff of the Commission believes the Commission should consider the threshold question of whether the reporting requirement in 21-A M.R.S.A. § 1056-B could apply to a municipality such as the City of South Portland.

Opportunity to Respond

The Commission staff would be interested in receiving any information that the City of South Portland would like to provide regarding this matter, including any view about whether 21-A M.R.S.A. § 1056-B could apply to a municipality. *Please provide any response you would like to make no later than Friday, October 30, 2009.* In particular, the Commission staff would be interested in the following information:

- Did the City intend to send the property tax mailing to property owners regardless whether it included the flyer concerning the direct initiatives?
- Did the insertion of the flyer on the direct initiatives increase the incremental cost of the property tax mailing? If so, by how much?

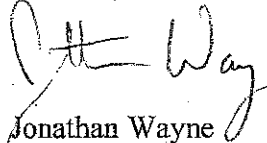
James H. Gailey, City Manager

Page 3

October 20, 2009

I also believe it would be helpful if a representative of South Portland could attend the Commission's November 19 meeting to answer any questions that arise. Please call me at 287-4179 if you have any questions. Thank you.

Sincerely,



Jonathan Wayne
Executive Director

cc: Mayor Tom Blake, City of South Portland
Corporation Counsel Sally J. Daggett, Jensen Baird Gardner & Henry
Assistant Attorney General Phyllis Gardiner
David P. Crocker, Esq.



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OCT 30 2009

October 29, 2009

MAINE ETHICS COMMISSION

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

Re: *City of South Portland/TABOR Now Request for Investigation*

Dear Mr. Wayne:

Thank you for this opportunity to respond to the request by TABOR Now that the Commission investigate the City of South Portland's recent tax bill mailing. We offer the following information to the Commission.

Does the Campaign Finance Reporting Statute Apply to a Municipality?

There is a threshold issue of whether the State campaign finance reporting statute applies to a municipality such as the City of South Portland (the "City"). The term "person" for purposes of the statute is defined currently as "an individual, committee, firm, partnership, corporation, association or organization." 21-A M.R.S.A. § 1001(3). Does the term corporation include a municipal corporation? What about other governmental entities such as counties, school administrative units and other political subdivisions of the State of Maine?

The legislative history of 21-A M.R.S.A. § 1001(3) does not support a reading of the term "corporation" to include a municipality or other governmental agency. In 1975, the Legislature enacted "An Act to Create the Commission of Governmental Ethics and Election Practices." P.L. 1975, ch. 621 (effective January 1, 1976). As part of the Act, the provisions relating to campaign reports and finances were codified as Chapter 35 of Title 21 (21 M.R.S.A. §§ 1391-1402). For contributions and expenditures relating to direct initiative or referendum legislation, the Act provided as follows:

October 29, 2009
Page 2

“[n]otwithstanding any other provision of law, any person, corporation, public or private utility, association, **governmental agency** or political committee accepting or expending money, to initiate, promote or defeat the public referendum of direct initiative legislation within the meaning of the Constitution of Maine or the state-wide public referendum of any statute shall be required, starting on the effective date of this Act, to file a report detailing the source, amount and date of receipt of all contributions and expenditures . . . ” P.L. 1975, ch. 621, § 9 (codified at 21 M.R.S.A. § 1392) (emphasis added).

In 1976, Chapter 35 of Title 21 was repealed and replaced by “An Act Relating to Campaign Reports and Finances.” P.L. 1975, ch. 759, § 1 (still codified as 21 M.R.S.A. §§ 1391-1402). Following the enactment of this legislation in 1976, Chapter 35 still related to campaign reports and finances. However, for the first time, Chapter 35 contained a definition of the term “person.” Starting in 1976, the term “person” was defined as “an individual, committee, firm, partnership, corporation, association or any other group or organization of persons.” 21 M.R.S.A. § 1392(5) (effective April 14, 1976). Conspicuous by its absence is the prior express reference to any “governmental agency.”

One year later, in 1977, the Legislature added a new Chapter 35-A to Title 21 entitled “Reports on Referendum Campaigns.” P.L. 1977, ch. 575, § 17 (effective October 24, 1977). A new § 1412(5) was added to Title 21 to define the term “person” as “an individual, committee, firm, partnership, corporation, association, public utility, **governmental agency** or any other group or organization of persons.” *Id.* (emphasis added). Meanwhile, the definition of “person” contained in 21 M.R.S.A. § 1392(5) remained unchanged.

In 1985, the Legislature recodified the election laws. Title 21 was repealed and replaced with Title 21-A. P.L. ch. 161, §§ 5-6 (effective September 19, 1985). Chapter 13, regarding “Campaign Reports and Finances,” was enacted as 21-A M.R.S.A. §§ 1001-1061. Section 1001(3) of Title 21-A defined the term “person” as “an individual, committee, firm, partnership, corporation, association or organization.” Again, conspicuous by its absence is any express reference to any “governmental agency.” The definition of “person” in § 1001(3) has remained unchanged since 1985.

In short, the Legislature knows how to include governmental agencies within the scope of the campaign finance reporting requirements of Maine law when it wants to, but it has chosen not to do so at present.

Jensen Baird
Gardner Henry

October 29, 2009
Page 3

If the Statute Applies, Has the \$5,000 Expenditure Threshold Been Met Here?

Even if the campaign finance reporting requirements of Maine law apply to governmental agencies (a position that the City disputes), the City has not expended in excess of \$5,000 on its second quarter tax bill flier mailing. Without addressing the issue of whether the one page flier was "for the purpose of initiating, promoting, defeating or influencing in any way a ballot question"* within the meaning of 21-A M.R.S.A. § 1056-B, the incremental cost of including the one-page flier in the second quarter tax bill mailing was as follows:

Production cost of one page insert	\$562.44 (9,374 inserts @ 6¢ each)
Postage (no incremental extra cost)	\$ 0.00
Staff time preparing flier	\$ 59.67
TOTAL	\$622.11

The one page flier was not part of a special mailing; the City sends tax bills quarterly and the timing was such that the City was able to include the flier with the second quarter tax bills. The one page flier did not increase the cost of postage for the tax bill mailing. The City is not going to make any additional expenditures or spend any further staff time related to the second quarter tax bill mailing.

Based on the above, the City respectfully requests that the Commission decline to undertake an investigation of this matter.

Representatives of the City of South Portland plan to attend the Commission's November 19, 2009 meeting in order to answer any questions the Commission may have. If you have any questions in the meantime, please call me. Thank you.

Sincerely,



Sally J. Daggett

Corporation Counsel
City of South Portland

SJD:gw

* The City is aware of guidance from the Maine Municipal Association Legal Services Department regarding "Partisan Advocacy – What Officials Can & Cannot Do" as published in the June 2009 edition of the Maine Townsman, the Maine Superior Court decision in Campaign for Sensible Transportation v. Maine Turnpike Authority, Docket No. CV-91-952 (Me. Super. Ct., Cum. Cty., October 8, 1991) (Alexander, J.), 1991 Me. Super. LEXIS 228, *app. dismiss'd as moot*, 658 A.2d 213 (Me. 1995) and the September 10, 2004 Opinion of the Attorney General relating to the use of public funds on citizen initiated ballot measures.

Jensen Baird
Gardner Henry

October 29, 2009
Page 4

cc: James H. Gailey, City Manager
David Crocker, TABOR Now

MARDEN, DUBORD,
BERNIER & STEVENS

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November 5, 2009

RECEIVED

NOV 6 2009

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

MAINE ETHICS COMMISSION

RE: TABOR NOW Request for Investigation of City of South Portland

Dear Mr. Wayne:

Please accept these comments in response to your letter of October 20, 2009 to the City of South Portland and Attorney Daggett's letter of October 29, 2009 on behalf of the City.

In your letter, you suggest that there is a threshold question as to whether 21-M.R.S.A. §1056-B applies to a municipality such as the City of South Portland¹. As explained below, application of the plain language of the statute easily resolves any such question.

The basic rule of statutory construction is that a statute, if it is not ambiguous, must be given its common, ordinary meaning, without resort to rules of construction. Ashe v. Enter. Rent-A-Car, 2003 ME 147, ¶ 7, 838 A.2d 1157, 1159. When interpreting a statute, the objective is to give effect to the Legislature's intent. State v. Bjorkaryd-Bradbury, 2002 ME 44, ¶ 9, 792 A.2d 1082, 1084. To determine that intent, one must first look to the statute's plain meaning. Id. If there is no ambiguity, we do not examine legislative history. Id.

Applying these simple rules to §1056-B quickly leads to the conclusion that it does apply to municipalities such as the City of South Portland.

§1056-B applies to "Any person not defined as a political action committee." The definitions for Chapter 13, of which §1056-B is a part, states that "'Person' means an individual, committee, firm, partnership, corporation, association or organization." 21-A M.R.S.A. §1001(3).

¹ I was surprised to see you suggest a narrow reading of the statute. When I have suggested a narrow reading of the same section in the past, you have argued for reading the plain language of the statute to advance the policy goal of public disclosure of campaign spending. That policy goal is no less important when the spending is by a municipality.

Maine law defines municipalities as corporations. 30-A MRSA §2002 states "The residents of a municipality are a body corporate which may sue and be sued, appoint attorneys and adopt a seal."

In addition, the City of South Portland's charter defines the City as a municipal corporation:

The inhabitants of the City of South Portland, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal corporation by the name of "City of South Portland."

The City of South Portland is, by definition, a corporation². As a result, its referendum related activities are covered by §1056-B.

The fact that §1056-B does make a specific reference to municipalities or governmental units is irrelevant. The Legislature included within the scope of §1056-B corporations – a more general term that includes municipalities. The threshold question raised in your letter is resolved by looking to the plain meaning of the statute. The legislative history cited in Attorney Daggett's letter should not be considered³.

I do agree that there remains a question as to whether the \$5000 expenditure threshold of §1056-B has been met. However, the Commission should not accept the cost estimates offered by the City for several reasons.

The City urges you to consider only the incremental costs of the mailing. This approach would be contrary to past practice of the Commission and would create a huge loophole in Maine's campaign finance laws. If only incremental costs were to be considered, organizations and businesses could include campaign materials of various kinds in mailings that were already planned and avoid campaign finance reporting as a result. In the past, the Commission has apportioned costs of expenditures made for more than one purpose on a pro-rata basis. The same approach should be used here – half of the postage costs incurred by the City should be apportioned towards the \$5000 reporting threshold and half should be considered the cost of mailing the tax bills. At a cost of 22 cents per flyer, postage alone would total \$2062.28.

² One could also reach the conclusion that the City is an organization. However, it is not necessary for the Commission to resolve the question on that basis.

³ Attorney Daggett's letter illustrates how consideration of legislative history is often like trying to read tea leaves. Though she concludes that the Legislature intended not to include municipalities under the statute due to the legislative history, one could also reach the conclusion that the Legislature concluded that more specific references to municipalities were unnecessary and left out such superfluous language.

The Commission should also not accept the 6 cents per copy cost to produce the insert. The Maine Heritage Policy Center recently sent a Freedom of Access Act request to the City of South Portland and was quoted a cost of 25 cents per page for copies provided in response to the request. If the City charges citizens 25 cents per copy to respond to requests authorized by Maine law, the same cost should be applied to the City's referendum related activities. At a cost of 25 cents per copy, the cost of producing the insert alone would be \$2343.50.

In addition, the City has offered no detail as to how it determined that only \$59.67 in staff time was involved in the City's referendum related activities. The City Manager is paid over \$100,000 per year -- \$59.67 would account for just over one hour of his time. It appears that the City's estimate does not include any time needed to stuff the flyer into the tax bills. It also appears that the City's estimate does not include any time needed to prepare the resolutions passed by the Council or to prepare information for consideration by the Council. As part of its investigation, the Commission should consider whether City staff attended any meetings or events concerning the referendum while on City time.

The information provided with the complaint, and in the response by the City, shows sufficient grounds for believing that the City spent more than \$5000 to influence the November 3rd election. The information provided shows sufficient grounds for believing that a violation may have occurred and, as a result, the Commission should authorize an investigation.

The investigation would also be a good opportunity for the Commission to consider, and provide guidance, regarding how municipalities should account for and report referendum related activities. In recent years, Maine's municipalities have become major players in referendum campaigns but it appears that Maine's municipalities have given little consideration to compliance with Maine's campaign finance laws. For example, earlier this year, the City of Bangor held meetings concerning Questions 2 and 4 and ultimately adopted resolutions opposing Questions 2 and 4. The Maine Heritage Policy Center made a Freedom of Access Act request to the City asking for details on the staff costs for these activities. The City was unable to provide any estimate because it did not track the staff time involved in the activities. I doubt Bangor is unusual in that regard. If municipalities are not tracking such expenditures, how will they ever know if they have passed the \$5000 reporting threshold?

For these reasons, I urge the Commission to open an investigation into the City of South Portland's referendum related activities.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written over the typed name.

Daniel I. Billings

RECEIVED
NOV 9 2009
MAINE ETHICS COMMISSION

David Peter Crocker

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November 6, 2009

VIA EMAIL jonathan.wayne@maine.gov
AND REGULAR MAIL

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: TABOR NOW Request for Investigation of City of South Portland

Dear Mr. Wayne:

The following are my comments in connection with your October 20, 2009, letter to James H. Gailey as well as Attorney Daggett's responsive letter dated October 29, 2009. Please consider my remarks as supplementing and incorporating those of Dan Billings in his letter of November 5, 2009.

In your October 20, 2009, letter you stated that the "threshold question" is whether section 1056-B "could apply to a municipality such as the City of South Portland." Quite apart from the plain language concerning the statute's applicability to "corporations", this does not seem like a very difficult question.

I would draw your attention to Article IV, Section 14 of Maine's Constitution:

Section 14. Corporations, formed under general laws. Corporations shall be formed under general laws, and shall not be created by special Acts of the Legislature, *except for municipal purposes*, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State.

(Emphasis added). This section - together with Section 13¹ - was added to the constitution by

¹**Section 13. Special legislation.** The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Mr. Jonathan Wayne
November 6, 2009
Page 2

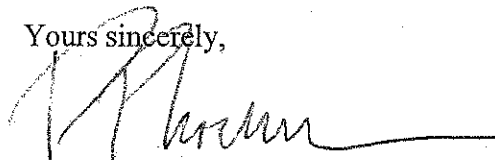
Amendment XIV in 1876. Taken together, the two sections express a preference for general law over special law, particularly as it pertains to corporate formation. While Section 14 does indeed permit special legislation in the case of municipal corporations and in cases where a corporate purpose cannot otherwise be attained, the more ordinary course is for *all* corporations - including the municipal variety - to be governed by general law. As it pertains to municipal corporations, the Legislature has provided such general law by enacting Title 30-A M.R.S.A.

The point, of course, is that Maine's Constitution explicitly recognizes municipal corporations *as being on a par with every other type of corporation formed under general law*. To say that South Portland is not a "corporation" for purposes of section 1056-B ignores not only the plain language of section 1056-B but also Article IV, Section 14 of Maine's Constitution.

With this basic background in mind there is scant reason to agonize over statutory construction and discussions of legislative history become irrelevant². If the Legislature had wished to exclude municipal corporations from the definition of "person" in 21-A M.R.S.A. § 1001(3), it could have done so - explicitly. It did not, however, and "corporation" must necessarily include *every* type of corporation.

I would therefore urge the Commission to open an investigation of South Portland's attempt to influence the outcome of the Question 2 and Question 4 ballot questions.

Yours sincerely,



David P. Crocker

DPC/mbs

²As an aside, Attorney Daggett seems to assume that a "governmental agency" is equivalent to an entity like a municipality. In general, however, the term is used to describe a department, board or commission *within* a political entity or branch. *See, e.g.,* 10 M.R.S.A. § 9402(9).

G. STEVEN ROWE
ATTORNEY GENERAL



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September 10, 2004

Representative Louis B. Maietta, Jr.
185 Elderberry Drive
South Portland, ME 04106

Dear Representative Maietta:

This is to respond to your letter dated August 31, 2004, which this Office received on September 2. In connection with the upcoming election on the property tax cap initiative, you ask for an opinion "dealing with the fundamental role of government, appointed officials as well as elected officials to use their position and tax dollars to influence the outcome of an election." You also ask that we "review and opine on the legal research and documentation accompanying this letter," referring to an accompanying letter from Eric Cianchette and Phil Harriman with numerous attachments, including a memorandum from Orlando Delogu ("the Cianchette/Harriman correspondence").

The terms of 5 M.R.S.A. § 195 guide this Office in the issuance of written legal opinions. This statute provides: "The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters." (Emphasis added.)

The questions raised in the materials you have submitted do not appear to relate to a "legislative matter" as that term is used in § 195. Legal issues concerning the role of government officials in the public debate over the tax cap initiative do not relate to any bill or other matter that is currently before the Legislature. The initiated measure itself, although pending before the Legislature earlier this year, is now before the public for a vote at the next statewide election under the provisions of the Maine Constitution, Art. IV, Pt. 3, § 18(2).

While we do not believe that 5 M.R.S.A. § 195 requires a response to the specific issues raised by the Cianchette/Harriman correspondence,¹ we do believe it important to set out our understanding of the existing law on the major issues you have raised: whether state and local government officials can advocate for or against a citizen initiated ballot measure, and whether those officials can use public funds to further those efforts.

There is one Maine case that addresses these issues. In *Campaign for Sensible Transportation v. Maine Turnpike Authority*, Docket No. CV-91-952 (Me. Super. Ct., Cum. Cty., October 8, 1991) (Alexander, J.), 1991 Me. Super. LEXIS 228, *app. dism'd as moot* 658 A.2d 213 (Me. 1995), the Campaign for Sensible Transportation sought injunctive relief against the allegedly improper expenditure of highway toll revenues in an effort to defeat a referendum prohibiting widening of the Maine Turnpike. While the Superior Court denied the requested injunction because most of the activities alleged to be improper had been terminated, the Court did provide some useful legal guidance, drawing on the case law of other jurisdictions.

First, the Court cited favorably the standard applied by the California Supreme Court in *Stanson v. Mott*, 551 P.2d 1, 3 (Cal. 1976) that "at least in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." 1991 Me. Super. LEXIS, at 7. At the same time, the Court recognized an exception to this general prohibition for "dissemination of information" and "fair comment."² In drawing a line between fair comment and improper advocacy, the Court stated:

Turnpike Authority board members may speak out on the issues of the day. Even plaintiffs conceded...that employees or board members may legitimately discuss the issue. They could also legitimately participate in debates where they are invited. All that could be prohibited are specific expenditures of turnpike funds whose sole purpose or primary purpose is to influence election results by going beyond fair comment.

Id. at 19. The ability of state officials to advocate on policy issues within the scope of their duties and responsibilities as state officers and employees is specifically recognized

¹In addition, many of the issues raised in the Cianchette/Harriman correspondence concern activities of municipal governments. The general principles discussed here do appear to apply to units of local government. However, as Orlando Delogu points out in his Memorandum (p.3), Maine's Constitution protects the power of the inhabitants of any municipality to alter their charters on all matters of local and municipal character unless prohibited by statute or the Constitution (Art VIII, Pt. 2, § 1), thus creating a materially different analytical framework than that applicable to state agencies. This Office does not represent municipalities, nor do we have particular expertise in municipal law. Thus we decline to engage in analysis of the specific allegations about the conduct of municipal officials presented in the Cianchette/Harriman correspondence, resolution of which would require factual investigation as well as a more detailed analysis of municipal law.

²Here, the Maine Superior Court relied on decisions of the Supreme Courts of both California and New Jersey, which are the two most frequently cited judicial decisions on the propriety of government expenditures and advocacy in public election matters: *Stanson v. Mott*, *supra*, and *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills*, 98 A.2d 673 (N.J. 1953).

by statute in Maine, 5 M.R.S.A. § 7056-A(7), and by courts in other states.³ See, e.g., *Colorado Taxpayers Union, Inc. v. Romer*, 750 F.Supp. 1041, 1045 (D. Colo. 1990), *app. dism'd for lack of standing*, 963 F.2d 1394 (10th Cir. 1992), *cert. den.*, 507 U.S. 949, 113 S.Ct. 1360 (1993) ("The fundamental flaw in the plaintiffs' contentions is the failure to distinguish between governmental interference with an initiative and opposition to it from persons occupying positions in government. There is a difference between the conduct of public officials in speaking out on controversial political issues and their use of governmental power to affect the election.").⁴

In addition, the Court in *Campaign for Sensible Transportation*, *supra*, made a distinction between "prohibited electioneering activities" and "legitimate activities analyzing and planning for eventualities should the referendum be successful." 1991 Me. Super. LEXIS 228 at 19. In the instant matter, such planning activities may be necessitated by the effect of the proposed tax cap on the provision of services by certain municipalities in their next tax year. Regardless of whether one supports or opposes such a cap, the provision of services is part of the core mission of local government. Preparation and dissemination of information concerning the impact of the tax cap and alternatives for compliance with its limitations should the voters approve it would appear to be legally appropriate.

Indeed, it may be argued that municipal officials have an obligation to inform their constituents of the impact of the tax cap on their town's budget. By way of comparison, 30-A M.R.S.A. § 2528(5) requires that any article put to a referendum vote by secret ballot that requests an appropriation of money must be accompanied by a recommendation of municipal officers and, if the action affects the school budget, a recommendation by the school board. While § 2528 does not apply to a statewide referendum, it illustrates the existing role of municipal officials in local budget matters.

The vast majority of the cases in which government spending and advocacy activities have been challenged are resolved without reaching (though some discuss) the question of the extent to which such activities may infringe on citizens' First Amendment rights. While the discussion of constitutional concerns in these cases does not present a coherent standard or theory, it is clear that courts are concerned about the potential for government speech to infringe on the public's right to be free from a biased political process. Most courts that have found the expenditure of public funds for governmental advocacy to be improper have based their decisions on the lack of express authorization. Two courts have found advocacy by governmental bodies or public spending on such

³ 5 M.R.S.A. § 7056-A(5)&(6) also provide certain protections for state employees to express views on political issues and to participate in political activities.

⁴ In *Romer*, the sponsors of a citizen initiated amendment to Colorado's Constitution asserted that the Governor had violated their First Amendment rights by using state resources and the power of his office to advocate for defeat of the initiative. While the bulk of the Governor's expenses were reimbursed by a private organization, the plaintiffs alleged that expenses incurred through use of a state car, airplane, and security personnel were inappropriate. The Federal District Court concluded that the Governor's campaign against the pending referendum did not violate First Amendment rights of the referendum's sponsors, and that the expenses complained of were incidental to the activities of the Governor's and were not improper.

advocacy to be in violation of state constitutional guarantees. *Stern v. Kramarsky*, 375 N.Y.S.2d 235, Fla. Dist. Ct. App. (N.Y. Sup. Ct. 1975); *Palm Beach County v. Hudspeth*, 540 So.2d 147 (Fla. Dist. Ct. App. 1989). In contrast, the court in *Alabama Libertarian Party v. City of Birmingham*, 694 F.Supp. 814 (N.D.Ala. 1988), concluded that spending by the city in support of proposed bond issues did not violate the First Amendment to the U.S. Constitution.⁵

The guiding principles of law are clearly stated in the Superior Court's decision in *Campaign for Sensible Transportation* in a manner that is consistent with the case law in other jurisdictions. Governmental bodies and officials may not expend public funds solely or primarily for purposes of partisan advocacy without express authorization, and even where authorized, these activities are subject to constitutional limits. They may disseminate information on matters such as citizen initiatives and may express their views as public officials. We have found no case concluding that public resources such as personnel time cannot be used in support of these allowable activities. However, the line between appropriate dissemination of relevant information and activities that constitute improper advocacy by government agencies and officials is not easy to define in the abstract.⁶ Such determinations are fact-dependent and may be complex, particularly in situations such as this where the subject matter of the issue before the voters has a direct and substantial impact upon the duties and responsibilities of those government agencies and officials. Municipal officials should be guided by the advice of their legal counsel in determining the appropriateness of specific activities between now and the election.

I hope this information is helpful.

Sincerely,



G. STEVEN ROWE
Attorney General

⁵ A useful discussion of the First Amendment considerations can be found in *Burt v. Blumenauer*, 699 P. 2d 168 (Or. 1985). A general discussion of the issues we address here can be found in Comment, *Contemplating the Dilemma of Government As Speaker: Judicially Identified Limits on Government Speech In the Context of Carter v. City of Las Cruces*, 27 N.M.L.Rev. 517 (Summer, 1997).

⁶ "...[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case." *Stanson v. Mott*, *supra*, at 12.



LEXSEE 1991 ME.SUPER. LEXIS 228

**THE CAMPAIGN FOR SENSIBLE TRANSPORTATION, WILLIAM ALCORN,
RONALD NOWELL, JON A. LUND, DESMOND FITZGERALD, and WARREN
R. DWYER, Plaintiffs v. MAINE TURNPIKE AUTHORITY, et al., and THE
COALITION FOR RESPONSIBLE GOVERNMENT, a.k.a. THE VOTE NO ON #
1 COALITION, Defendants**

CIVIL ACTION DOCKET NO. CV-91-952

SUPERIOR COURT OF MAINE, CUMBERLAND COUNTY

1991 Me. Super. LEXIS 228

October 8, 1991, Decided

CORE TERMS: turnpike, election, expenditure, referendum, public funds, preliminary injunction, trustee process, influencing, luncheon, transportation, upcoming, toll, injunction, voter, undertaken, public agency, legislative authorization, fair comment, individually, presentation, planning, campaign, opposing, issuance, repair, action committee, cause of action, consultant, Enabling Act, inherent authority

JUDGES: [*1] DONALD G. ALEXANDER, JUSTICE, SUPERIOR COURT.

OPINION BY: ALEXANDER

OPINION

OPINION AND ORDER

This matter is before the court to address six pending motions in this action in which plaintiffs allege that the Maine Turnpike Authority has improperly used Turnpike revenues to oppose an upcoming referendum on Turnpike widening and transportation planning.

The six pending motions are:

1. The Campaign for Sensible Transportation's first Motion for Preliminary Injunction, filed August 21, 1991;

2. The Campaign for Sensible Transportation's second Motion for Preliminary Injunction or, in the alternative, for Attachment on Trustee Process as to The Coalition for Responsible Government, filed September 12, 1991;

3. The Coalition for Responsible Government's Motion to Dismiss and for Summary Judgment;

4. The Maine Turnpike Authority's Motion to Dismiss The Campaign for Sensible Transportation due to lack of standing;

5. The Maine Turnpike Authority's Motion to Dismiss the individual plaintiffs, again for lack of standing; and

6. The Maine Turnpike Authority's Motion to Dismiss the individually named defendants who are the members and executive director of the Maine Turnpike Authority.

The [*2] Maine Turnpike Authority is a public agency whose powers and duties are specified by law, 23 M.R.S.A. §§ 1961-1981. The Coalition for Responsible Government is a private organization created by individuals and organizations interested in opposing the upcoming turnpike and transportation planning referendum. While they are joined as defendants in this action, in reality, plaintiffs' claims against each present

very different legal issues. Accordingly, the court will address the pending motions separately for the Maine Turnpike Authority defendants and The Coalition for Responsible Government.

MAINE TURNPIKE AUTHORITY ISSUES

STANDING:

Two of the Maine Turnpike Authority's Motions to Dismiss question plaintiffs organizational and individual standing to bring this action. In challenging the alleged expenditure of Turnpike revenues to oppose the referendum, plaintiffs claim standing as referendum supporters, taxpayers, Turnpike toll payers and voters. Additionally, one plaintiff is a Turnpike bond holder. The Maine Turnpike Authority asserts that these plaintiffs lack standing because, except perhaps for the Turnpike bond holder, they [*3] can demonstrate no particularized injury different from the public at large as a result of the alleged improprieties. Therefore, the Maine Turnpike Authority argues, such an action can only be brought on the public's behalf by the Attorney General. ¹ *Buck v. Town of Yarmouth*, 402 A.2d 860 (Me. 1979); *Sanger v. County Commissioners of Kennebec*, 25 Me. 291, 296 (1845).

1 In July, counsel for the plaintiffs sought to have the Attorney General bring this action or intervene in the matter on their behalf. To date, the Attorney General has not taken any action. An affidavit filed on behalf of the plaintiffs indicates that the Attorney General's Office has indicated, informally, that they will not involve themselves in this matter.

There are cases to support the Maine Turnpike Authority's position. However, cases in recent years suggest that the doctrine of particularized injury will allow standing based solely on voter or taxpayer status where improper action regarding election practices [*4] or expenditure of public funds is alleged, and the circumstances of the case make it obvious or unlikely that the Attorney General will appear in support of the plaintiffs' position. *Common Cause v. State*, 455 A.2d 1 (Me. 1983); *McCaffrey v. Gartley*, 377 A.2d 1367, 1370 (Me. 1977); *Jones v. Maine State Highway Commission*, 238 A.2d 226, 229 (Me. 1968); see also *Baker v. Carr*, 369 U.S. 186, 204, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962). The *Common Cause* case and *Matter of International Paper Company*, 363 A.2d 235, 238-239 (Me. 1976) also

indicate that organizations may take positions on behalf of members asserted injuries even without naming specific members claiming specific injuries. See also *NAACP v. Alabama*, 357 U.S. 449, 458, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 (1958).

These precedents would appear to grant both the organizational and individual plaintiffs standing to bring this action in which they allege improper governmental action which assertedly affects both expenditure of public funds and election practices. Accordingly, the two motions by the Maine Turnpike Authority to dismiss the organizational and the individually named plaintiffs in [*5] this action will be denied.

PRELIMINARY INJUNCTION ISSUES:

Any party seeking a preliminary injunction bears the burden of persuasion on four criteria. Thus, plaintiff must demonstrate:

1. Irreparable injury to the plaintiff if the injunction is not granted;
2. A reasonable likelihood of success on the merits of plaintiffs' substantive claim;
3. Issuance of the injunction will not adversely affect the public interest; and
4. The injury sought to be enjoined outweighs any harm which granting injunctive relief would inflict on defendants. *Department of Environmental Protection v. Emerson* 563 A.2d 762, 768 (Me. 1990); *Ingraham v. University of Maine at Orono*, 441 A.2d 691, 693 (Me. 1982).

If the Maine Turnpike Authority did make any improper expenditures designed to affect the result of the referendum election, such would not be cause for holding a new election. Thus, if any alleged impropriety does in fact turn the election against the result sought by the plaintiffs, the injury would be irreparable. However, this being said does not guarantee that issuance of a preliminary injunction will avoid the injury. To prevail, plaintiffs [*6] must demonstrate that enjoined actions are occurring or will occur that will cause or continue to cause injury to the plaintiffs. Even if past wrongs are proven, they would not justify an injunction unless they are continuing or will occur again prior to the election.

There is no case directly on point in Maine.

However, precedent in other states suggests that absent specific legislative authorization, public agencies may not spend public funds to take sides in elections and attempt to influence results.

The most thoughtful discussions of this issue, in other states, are provided in *Stanson v. Mott*, 17 Cal. 3d 206, 551 P.2d 1, 130 Cal. Rptr. 697 (Cal. 1976) and *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills*, 13 N.J. 172, 98 A.2d 673 (N.J. 1953). The California case involved an instance of the director of the State Department of Parks and Recreation spending public funds to promote passage of a park bond issue. This action was challenged by certain citizens. At the trial level, a demurrer to the action was sustained -- the equivalent of granting a motion to dismiss. On appeal, the California Supreme Court reversed holding, in essence, that: (1) while the department [*7] could disseminate information to the public about the bond election and make a fair presentation of relevant facts, it could not expend public funds to promote a one-sided view of the bond issue, and (2) the park director could be held individually liable for improper expenditure of funds only if it was determined that he failed to exercise due care in authorizing the expenditures. These positions of law having been articulated, the matter was then remanded to the trial court for factfinding in accordance with the opinion. Thus, the opinion did not address the issue on a developed record, but only made general statements of law to serve as a guide to later factfinding.

In its opinion, the California Supreme Court noted that:

Past decisions in both California and our sister states establish that, at least in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign.

551 P.2d at 3.

An example of an explicit legislative authorization to spend public funds to influence elections which has been upheld on appellate review is provided in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). [*8] That opinion approved the present system of public fund assistance to major presidential candidates. See particularly the discussion at 96 S. Ct. at 668-673.

Both the California Supreme Court and the New Jersey Supreme Court, in their opinions, have recognized a "dissemination of information" and "fair comment" exception to their general prohibitions on expenditure of public funds to influence election results. Thus, the California Supreme Court noted that:

Although the department did possess statutory authority to disseminate 'information' to the public relating to the bond election, the department, in fulfilling this informational role, was obligated to provide a fair presentation of the relevant facts.

551 P.2d at 3.

The New Jersey case involved school district advocacy of approval of a school construction referendum, particularly focusing on a flyer which strongly advocated a "yes" vote.

Writing for the New Jersey Supreme Court, recently retired U.S. Supreme Court Justice William J. Brennan summed up the standards for separating appropriate and inappropriate public expenditures for issues discussion in connection with referendum elections. [*9]

We do not mean that the public body formulating the program is otherwise restrained from advocating and espousing its adoption by the voters. Indeed, as in the instant case, when the program represents the body's judgment of what is required in the effective discharge of its responsibility, it is not only the right but perhaps the duty of the body to endeavor to secure the assent of the voters thereto. The question we are considering is simply the extent to and manner in which the funds may with justice to the rights of dissenters be expended for espousal of the voters' approval of the body's judgment. Even this the body may do within fair limits. The reasonable expenses, for example, of the conduct of a public forum at which all may appear and freely express their views pro and con would not be improper. The same may be said of reasonable expenses incurred for radio or

television broadcasts taking the form of debates between proponents of the differing sides of the proposition. It is the expenditure of public funds in support of one side only in a manner which gives the dissenters no opportunity to present their side which is outside the pale.

Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills, 13 N.J. 172, 98 A.2d 673, 677-678. [*10]

The California and New Jersey cases both involved use of public funds to support referenda which would benefit the spending agency. However, the reasoning of these opinions applies equally to either support or opposition to referenda. The doctrine has been applied to public expenditures to promote opposition to a referendum; *Campbell v. Arapahoe County School District No. 6*, 90 F.R.D. 189 (D.Colo. 1981); *affirmed Campbell v. Joint District 28-J*, 704 F.2d 501 (10th Cir. 1983).

When an agency expenditure or other action is challenged as lacking appropriate legislative authorization, agencies will frequently argue, and sometimes with success, that the expenditure is implicitly authorized because it is a necessary incident to carrying out the agency's statutorily authorized functions. *Cf. State v. Fin & Feather Club*, 316 A.2d 351 (Me. 1974). Thus in the mid-70's, the Maine Turnpike Authority argued to the Law Court that it had inherent authority to expand the Turnpike from two lanes to three or more lanes, an expansion proposal similar to that underlying the dispute herein. The original 1941 Turnpike Enabling Act, P. & S.L. 1941 [*11] ch. 69 § 11(c), -- since changed -- authorized original construction of the Turnpike through bonding and then expenditure of revenues to repay bonds and to maintain, repair and operate the Turnpike. *Maine Turnpike Authority v. Brennan*, 342 A.2d 719, 723-725 (Me. 1975).²

2 The controversy in the *Maine Turnpike Authority v. Brennan* matter developed as a result of issuance of an opinion by then Attorney General Jon Lund, and the litigation began during Mr. Lund's tenure. Coincidentally, Mr. Lund, as a private citizen, is one of the individual plaintiffs in this action.

In its opinion, the Law Court indicated that it would

narrowly construe the Turnpike Enabling Act. It rejected the inherent authority argument put forward by the Turnpike, and it held that the authorization to expend toll revenues for maintenance, repair, and operation of the Turnpike did not extend to expansion. The opinion stated:

We believe this section of the Enabling Act was intended by the Legislature to restrict [*12] the application of toll revenues to current expenses that are recurring and ordinary in nature. Thus construed, § 11 presents an assurance that toll revenues will be applied only to those necessary and incidental costs appropriate to sustain a safe, modern, and extant highway.

342 A.2d at 726.

The Turnpike Enabling legislation was completely rewritten in 1981 and now appears at 23 M.R.S.A. §§ 1961-1981. However, the initial legislative findings in § 1961(1) appear to indicate that the revised enabling law did not change the basic purposes for which Turnpike revenues could be used -- debt retirement, operations, maintenance, and repairs -- as interpreted in the earlier Law Court opinion. Thus, § 1961(1) provides in pertinent part:

Toll revenues should be utilized to pay for retirement of any outstanding debt, including interest thereon; to pay for operation and maintenance of the turnpike; to pay for reconstruction of the turnpike; and to repay the Federal Government for grants or loans, the proceeds of which were used for the construction or reconstruction of the turnpike or portions of the turnpike, interchanges and certain [*13] interconnecting access roads, but only to the extent that the repayment is required as a result of maintaining tolls on the turnpike.

The critical terms are defined in § 1964. The powers of the Authority are broadly stated in 23 M.R.S.A. § 1965(1). The purposes for which revenues may be expended are listed in 23 M.R.S.A. § 1974(1). The powers sections, 1965(1) includes, at subpart T, a.

prophylactic clause. The revenue purposes section 1974(1) does not have a similar broad statement. Neither section includes specific authority to lobby or influence elections. Thus, if expenditures to influence the election are in fact occurring, their justification must be found not in any explicit legislative authority but in the inherent authority argument.

In its opinion, the California Supreme Court had noted that legislative lobbying expenses might be more easily justified than election influencing expenses as a necessary incident of a modern government agency performing its statutory duties. *Stanson v. Mott*, 551 P.2d at 9-10. In Maine, in a different context, the Law Court approved Public Utilities Commission rejection [*14] of lobbying as an expense claimed to be a necessary incident to repairs, maintenance, and operations which could be charged to ratepayers in a telephone rate case. *New England Telephone and Telegraph Co. v. Public Utilities Commission*, 390 A.2d 8, 56-57 (Me. 1978).

Accordingly, if the Maine Turnpike Authority is making or has made expenses for the purpose of influencing the outcome of the upcoming referendum, and the uses of public funds extend beyond "fair comment", such expenses would not be authorized by statute either expressly or by necessary implication. Thus, the claims in plaintiffs' pleadings would be sufficient to defeat a motion to dismiss by the Maine Turnpike Authority.

The allegations are also sufficient to defeat the pending Motion to Dismiss on behalf of the individual members of the Turnpike Authority and the Executive Director. Under the Maine Tort Claims Act, the individual public officials would be immune from suit for explicit acts approving expenditures unless plaintiffs can prove that the officials' actions were taken "in bad faith". 14 M.R.S.A. § 8111(1)(E). See also *Stanson v. Mott*, 551 P.2d at 13-16, [*15] holding that individuals authorizing expenditures to influence elections may be individually liable for such expenditures if, and only if, the factfinder determines after taking of evidence that the officials failed to exercise "due care" in permitting the expenditures.

Thus, while the motion to dismiss the individual Turnpike officials must be denied, the plaintiffs bear a heavy burden before liability could be found for any individual Turnpike official.

The reader of this opinion must recognize that denial of a motion to dismiss does not mean that plaintiffs will be entitled to relief. All that a denial of a motion to dismiss states is that plaintiffs have stated a cause of action which may entitle them to relief if their claims can be proven.

Looking at past Turnpike expenditures, there are certainly some expenditures about which there are disputed fact issues to be determined prior to any final judgment. These include an October, 1990 meeting in Brunswick, Maine, which certain outside consultants were paid to attend, outside consulting work performed by a public relations firm, a separate economic analysis performed by an economic consultant, an apparent legal review of petitions [*16] for a possible challenge to validity of signatures, and some newsletters, legal research, and legal opinions which have been made public during the course of the debate on the referendum.

Plaintiffs assert that all of these expenditures are expenditures undertaken for the purpose of influencing defeat of the citizen initiative. Some of these items, such as the Turnpike newsletters published since the referendum vote was set, do not indicate the level of partisan advocacy found improper by the New Jersey Supreme Court. However, on the present limited record, without complete development of the facts, there appears to be support in the evidence for a view that some past expenditures may have been primarily directed at influencing the referendum debate or raising procedural issues relating to the citizen initiative process.

The Turnpike Authority notes that some of the expenditures were undertaken before it was certain that there even would be a Turnpike widening and transportation planning referendum on this November's ballot. Other expenditures, the Turnpike argues, were undertaken to fulfill their obligation to plan for and examine the possible consequences of the referendum should [*17] it be successful. The use of the results of such analyses, by others, if the analyses themselves were legitimately undertaken, would not be subject to complaint.

Separate from the analyses, studies, and legal work is the issue of certain luncheons which plaintiffs assert, and which the evidence appears to indicate, were convened and subsidized by the Turnpike Authority. If the primary purpose of these luncheons was to discuss the upcoming referendum and attempt to influence it, use of Turnpike

revenues to subsidize such luncheons would be prohibited unless the content of the Turnpike presentation at the luncheons met the fair comment exception to the bar on use of public funds for election influencing activities.

These subsidized luncheon programs and other disputed expenditures occurred in the past. The Turnpike states that the luncheons and publication of their newsletter have been suspended at least until after the election to avoid any suggestion of improper election influencing activities.

The purpose of the preliminary injunction sought by the plaintiffs is to be preserve the status quo pending the election and prevent any improper expenditure of public funds from influencing [*18] the election. To go beyond preservation of the status quo, and consider mandatory or remedial relief at the preliminary injunction stage is highly unusual relief to be considered with significant caution and granted only where plaintiff can show "a clear likelihood of success on the merits". *Department of Environmental Protection v. Emerson*, 563 A.2d 762, 770-771 (Me. 1989) (emphasis added). A draft injunction order, submitted by the plaintiffs after hearing, does not propose any such mandatory or remedial relief. Thus, the only injunctive issue before the court is prohibitory -- status quo preserving -- relief.

To gain a preliminary injunction, it is plaintiffs' burden to demonstrate that the Turnpike is now making or may make expenditures of public funds to influence the outcome of the election in a way which does not provide a fair presentation of the issues. There has been presented a considerable volume of evidence as to what has occurred in the past. As noted above, this activity is subject to varying interpretations offered by the plaintiffs and the Turnpike Authority. However, it appears undisputed that, at the present time, the principal public relations [*19] activities undertaken by the Turnpike Authority which relate to the upcoming referendum -- the luncheons -- have been terminated until after the election. The Turnpike has ongoing relationships with its attorneys and consultants, and receives advice from them. However, the court cannot find, by a preponderance of the evidence, that any of these contacts that are expected in the next month will involve prohibited electioneering activities rather than legitimate activities analyzing and planning for eventualities should the referendum be successful.

Prior restraint of speech by preliminary injunctive acts are strongly disfavored. Turnpike Authority board members and employees may speak out on the issues of the day. Even plaintiffs conceded at oral argument and by their draft injunction order that employees or board members may legitimately discuss the issue. They could also legitimately participate in debates where they are invited. All that could be prohibited are specific expenditures of turnpike funds whose sole purpose or primary purpose is to influence election results by going beyond fair comment.

Discussion at oral argument recognized the difficulty of identifying any ongoing [*20] action of the Turnpike Authority the sole or primary purpose of which is to influence the outcome of the election. After its review of the record, the court finds no specific ongoing acts, or future expected acts of the Turnpike Authority in violation of the principles stated in this opinion between now and election day. Therefore, plaintiffs' request for a preliminary injunction directed to the Maine Turnpike Authority must be denied.

COALITION FOR RESPONSIBLE GOVERNMENT ISSUES

Plaintiffs' Complaint against The Coalition for Responsible Government raises very different issues than the Complaint against the Maine Turnpike Authority. The Coalition for Responsible Government is an association of private individuals and organizations who have joined together to oppose the upcoming referendum. Plaintiffs assert that approximately \$ 200,000 in Turnpike funds have been improperly directed to the benefit of The Coalition for Responsible Government by the Maine Turnpike Authority. Plaintiffs ask that these funds be returned as "restitution" from The Coalition for Responsible Government to the Maine Turnpike Authority. The plaintiffs seek trustee process against the Coalition for [*21] Responsible Government to tie up and protect the funds which they allege to have been improperly diverted and to otherwise stop acts by The Coalition for Responsible Government which, plaintiffs claim, are based on the improper acts of the Maine Turnpike Authority.

The record in this case, at least to the extent the court has understood it, contains absolutely no indication of any direct transfer of funds from the Maine Turnpike Authority to The Coalition for Responsible Government. Instead, what is alleged is that because The Coalition for

Responsible Government has used some of the same legal counsel and consultants as the Maine Turnpike Authority, and papers prepared for the Turnpike Authority, the Maine Turnpike Authority's payments to these individuals and organizations, for services rendered to the Maine Turnpike Authority are in effect a diversion of resources to The Coalition for Responsible Government.

Plaintiffs' Motion for Trustee Process also raises grave free speech and right of participation in election process issues. It is in essence an effort by a political action committee supporting one side in an election against an opposing political action committee which, if [*22] successful, would tie up a substantial amount of the opposing committee's funds and directly affect the extent to which the Coalition could participate in the pre-election debate. The court would be entering largely untested waters if it approved a process where, as preliminary relief, one political action committee could by trustee process, tie up a substantial portion of an opposing political action committee's funds at a critical point the pre-election debate.

The court recognizes that Maine has something close to a hair trigger justification for issuance of attachment and trustee process. *Casco Northern Bank v. New England Sales*, 573 A.2d 795 (Me. 1990); *Terry v. T.J.C. Coin & Stamp Co.*, 447 A.2d 812 (Me. 1982); *Bowman v. Dussault*, 425 A.2d 1325, 1328-29 (Me. 1981). However, such a low "reasonable possibility" standard does not justify casual consideration of plaintiffs' request for trustee process, particularly in light of *Connecticut v. Doeher*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991) and the new caution it brings to consideration of such matters.

In this case where the requested trustee process would inject the court into the [*23] pre-election debate and affect one side's ability to debate, trustee process could be approved only where the cause of action is particularly clear and the likelihood of success on the merits is particularly high. In the instant case, plaintiffs state no cause of action against The Coalition for Responsible Government on which they have a reasonable likelihood of success. In fact, based on the court's review of the materials submitted with the pending motions, it is established without dispute as to material fact that plaintiffs are not entitled to any relief against The Coalition for Responsible Government. Plaintiffs clearly disagree politically with the Coalition. Plaintiffs, as a matter of policy, may believe that the

Turnpike Authority should not have cooperated with the Coalition. However, the fact that a public agency cooperates with a private entity in connection with shared views on an election does not give rise to a cause of action against the cooperating private entity where, as here, there is absolutely no evidence of any direct transfer of funds from one to the other. Therefore, The Coalition for Responsible Government's Motion for Summary Judgment will be granted.

[*24] Based on the above discussion, the court orders and the entry shall be:

1. Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' separate Motion for Preliminary Injunction, or in the alternative, for Attachment on Trustee Process are **DENIED**.

2. The three separate Motions to Dismiss filed by the Maine Turnpike Authority are **DENIED**.

3. The Motion to Dismiss and for Summary Judgment filed by The Coalition for Responsible Government, and treated herein as a Motion for Summary Judgment, is **GRANTED**.

4. Judgment for The Coalition for Responsible Government that plaintiffs are not entitled to relief against them. The Coalition for Responsible Government is dismissed as a party to this action.

DATED: October 8, 1991

DONALD G. ALEXANDER

JUSTICE, SUPERIOR COURT

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775-2051

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Agenda for City Council Workshop of: September 14, 2009

Meeting Begins: 6:30 P.M.




Location: Community Center

Amended:

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[Agenda](#)




1. Expansion of Recycling Program 6:30 p.m.

 [Position Paper](#)
 [Gato Memo](#)
 [Tote Quote](#)

2. Accepting Credit Cards 7:15 p.m.

 [Position Paper](#)

3. TABOR and Excise Tax Initiatives – 7:35 p.m
November 3, 2009 Election

 [Position Paper](#)
 [TABOR Info](#)
 [Excise Info](#)

[Printer-friendly Version](#)

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City Council Workshop

Agenda Item #3

September 14, 2009

TABOR and Excise Tax Initiatives
November 3, 2009 Election

I want to take an opportunity to introduce two referendums which will be on the November ballot. TABOR II and Motor Vehicle Excise Tax referendums, if either one passes, will significantly change the budget landscape in South Portland.

Unlike the first TABOR initiative, which focused on local spending, TABOR II is directed at restraining the growth in state and local government by imposing expenditure limitations by requiring a procedure of voter approval of certain state tax increases. Under the bill, growth in annual expenditures of the General Fund, the Highway Fund and other Highway Fund budgets are limited according to increases in population and inflation.

Under this bill, a state tax increase would require a majority vote in both the Senate and House of Representatives, and a majority approval of the voters. State expenditure limits contained in the bill could be exceeded by a majority vote of the Legislature and majority approval by the voters. Municipal and county LD 1 expenditure limits could be exceeded by a majority approval by the voters of that local district, which is different from current practice of only needing a majority vote of sitting Council/Board of Selectman.

In addition, this bill will require counties and municipalities to use a model cost center budget summary already developed by the Department of Audit and require information in that format to be made available to local voters, filed annually with the Maine Revenue Service and posted on any publicly accessible website maintained by the applicable county or municipality as well as the Maine Revenue Service's website.

The Motor Vehicle Excise Tax initiative is geared towards cutting the motor vehicle excise tax rates that are applied when cars and trucks are registered each year. The rates are proposed to be cut between 50% and 70% on newer cars (four years old or newer). The rate cut is just under 40% for fifth year vehicles, with no reduction for motor vehicles older than five years.

As the Council is aware, proceeds from excise tax does not go to the State's treasury, but remains within the municipality as revenue. If adopted the change would take effect in January 2010, just months after the November election.

With this decrease in excise tax, South Portland stands to lose approximately 40% of excise revenue or about 1.9 million. The loss of this revenue will create a major budget issue for the City, ultimately adding \$.48 to the tax rate (based on 2008 numbers) or experiencing a significant loss of services to the community.

I have only provided a brief overview of the proposals for both initiatives. Please refer to the attached documents for further information on each.

At Monday's meeting the Council may want to discuss whether a citizens' committee should be formed to provide recommendations of direction if either or both of these initiatives are successful.

Additionally, on Tuesday September 15th, the Maine Municipal Association will be holding a regional workshop at the South Portland Community Center to educate the public on both initiatives. The workshop is from 6:30 to 8:30 pm.


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Agenda for City Council Meeting of: September 21, 2009

Meeting Begins: 7:00 P.M.

Location: Council Chambers

Amended:

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[Agenda](#)

A. Acceptance of Minutes
Passed 7-0

[Minutes 09-09-09](#)

B. Communications from City Manager

C. Petitions and Communications

Department Reports for the month of August, 2009.

Attendance Reports for the month of August, 2009.

[Fire Department 08-09](#)

[Personnel 08-09](#)

[Welfare Report 08-09](#)

[Civil Service Minutes 06-25-09](#)

[Civil Serv Minutes 08-04-09](#)

[Library Minutes 08-12-09](#)

[CDAC Meeting 09-01-09.pdf](#)

D. Appointment Calendar

1. ORDER #103-08/09

Economic Development Committee, District One (Coward) to fill a term which expires on

03/23/12. Postponed since 03/16/09. Passage requires majority vote.

Postponed 7-0

 [Position Paper](#)

2. ORDER #104-08/09

Economic Development Committee, District Two (Smith) to fill a term which expires on 03/23/12. Postponed since 03/16/09. Passage requires majority vote.

Postponed 7-0

 [Position Paper](#)

3. ORDER #126-08/09

Energy and Recycling Committee, District Two (Smith), to fill a term which expires on 05/05/12. Postponed since 05/04/09. Passage requires majority vote.

Passed 7-0

 [Position Paper](#)

 [Order](#)

 [Application](#)

4. ORDER #01-09/10

Library Advisory Board, District Two (Smith), to fill an unexpired term which expires on 12/31/10. Postponed since 07/06/09. Passage requires majority vote.

Postponed 7-0

 [Position Paper](#)

5. ORDER #12-09/10

Board of Appeals, District Two (Smith), to fill a term which expires on 07/23/12. Postponed since 7/20/09. Passage requires majority vote.

Postponed 7-0

 [Position Paper](#)

6. ORDER #19-09/10

Library Advisory Board, At Large (Boudreau), to fill an unexpired term which expires on 12/31/11. Postponed since 08/03/09. Passage requires majority vote.




Postponed 7-0

 Position Paper

7. ORDER #28-09/10

Energy & Recycling Committee, At Large (Boudreau), to fill an unexpired term which expires on 05/5/11. Postponed since 08/17/09. Passage requires majority vote.




Passed 7-0

 Position Paper
 Order
 Application

8. ORDER #47-09/10

Voter Registration Appeals Board, Chair, to fill a term which expires on 09/29/11. Passage requires majority vote.

Passed 7-0

 Position Paper
 Order
 Application

9. ORDER #48-09/10

Voter Registration Appeals Board, Republican appointment, to fill a term which expires 09/29/10. Passage requires majority vote.

Postponed 7-0

 Position Paper

10. ORDER #49-09/10

Voter Registration Appeals Board, Democratic appointment, to fill a term which expires 09/29/10. Passage requires majority vote.

Postponed 7-0

 Position Paper

E. Consent Calendar

11. ORDINANCE #4-09/10

Passed 7-0

12. ORDINANCE #5-09/10

Passed 7-0

13. Business License

Passed 7-0

14. Business License

Passed 7-0

15. Business License

Passed 7-0





 [Position Paper](#)
 [Application](#)

H. Action on Old and New Business

16. ORDER #50-09/10

Accepting miscellaneous donations. Passage requires majority vote.







Passed 7-0

 [Position Paper](#)
 [Order](#)
 [Dimatteo Donation](#)
 [Donations to Service Memorial](#)

17. ORDER #51-09/10

Award of Bid #24-10 to Presidio Networked Solutions, of New Gloucester, ME, for the purchase of a CISCO 6509 Switch for the Information Technology Department. Passage requires majority vote.






Passed 7-0

 [Position Paper](#)
 [Pennington Memo](#)
 [Presidio Quote](#)
 [Order](#)
 [Bid Tab](#)
 [Specs](#)

18. ORDER #52-09/10

Award of Bid #26-10 to Grace Quality Used Cars, of Morrisville, PA, for the sale of used police cruisers. Passage requires majority vote.

Passed 7-0




 [Position Paper](#)
 [Grace Quality Quote](#)
 [Order](#)
 [Bid Tab](#)
 [Specs](#)

19. ORDER #53-09/10

Authorizing formation of the "Long Creek Watershed Management District" as a non-capital stock non-profit corporation pursuant to the Long Creek Watershed Management District

Interlocal Agreement. Passage requires majority vote.

Passed 7-0

 [Position Paper](#)
 [Order](#)
 [Bylaws Revised 09-18-09](#)

20. RESOLVE #1-09/10

Indicating the opposition of the City of South Portland to the November Ballot question seeking to decrease the automobile excise tax. Passage requires majority vote.

Passed 7-0

 [Position Paper](#)
 [Resolve](#)

I. Citizen Discussion (Second Part)

J. Councilor's Round Robin

K. Executive Session

A motion may be made to go into executive session pursuant to 36 M.R.S.A. §841, to discuss applications(s) for abatement of property taxes on account of infirmity or poverty; and pursuant to 1 M.R.S.A. §405(6)(C), discussion of the acquisition or disposition of publicly held property - South Portland Armory.

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Meeting of September 21, 2009

**South Portland City Council
Position Paper of the City Manager**

Subject:

**RESOLVE #1-09/10 – Indicating the opposition of the City of South Portland to the November Ballot question seeking to decrease the automobile excise tax.
Passage requires majority vote.**

Position:

The Motor Vehicle Excise Tax initiative on the November 3, 2009 ballot is geared towards cutting the motor vehicle excise tax rates that are applied when cars and trucks are registered each year. The rates are proposed to be cut between 50% and 70% on newer cars (four years old or newer). The rate cut is just under 40% for fifth year vehicles, with no reduction for motor vehicles older than five years.

As the Council is aware, proceeds from excise tax does not go to the State's treasury, but remains within the municipality as revenue. If adopted the change would take effect in January 2010, just months after the November election.

With this decrease in excise tax, South Portland stands to lose approximately 40% of excise revenue or about 1.9 million. The loss of this revenue will create a major budget issue for the City, ultimately adding \$.48 to the tax rate (based on 2008 numbers) or experiencing a significant loss of services to the community.

This item was discussed at last Monday's workshop and is on the agenda to formally pass a Resolve expressing the City's opposition to this ballot question seeking to decrease the automobile excise tax.

Requested Action:

Council passage of RESOLVE #1-09/10.


City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

RESOLVE #1-09/10

District One
THOMAS S. COWARD

District Two
PATRICIA A. SMITH

District Three
JAMES A. SOULE

District Four
MAXINE BEECHER

District Five
JAMES HUGHES

At Large
LINDA R. BOUDREAU

At Large
THOMAS E. BLAKE

Indicating the Opposition of the City of South Portland to the November Ballot Question Seeking to Decrease the Automobile Excise Tax

WHEREAS, a question will appear on the November election ballot that, if approved, would result in a dramatic reduction in the automobile excise tax; and

WHEREAS, vehicles less than six years old would see a reduction in the excise tax ranging between forty and seventy percent, while vehicles six years old and older would see no change; and

WHEREAS, 68% of vehicles statewide are six years old and older and would see no change in their excise tax; and

WHEREAS, corporate and business fleets, which are the source of approximately one-third of the City's excise tax receipts, would be a major beneficiary of this change; and

WHEREAS, this will result in an approximate 40% reduction in auto excise tax revenues received by the City of South Portland; and

WHEREAS, the auto excise tax is the third largest revenue source supporting City General Fund operations, providing the City with approximately \$4.7 million dollars annually, an amount which would be reduced by \$1.9 million under this proposal; and

WHEREAS, auto excise receipts, when coupled with road assistance funding received from the State of Maine, closely approximate the amount spent annually by the City for summer and winter road maintenance; and

WHEREAS, to replace this lost revenue through property taxation would require the City to increase its property tax rate by 48 cents per thousand of assessed value; and

WHEREAS, if approved, this reduction could go into effect as early as January 2010, six months into the City's fiscal year and at a point where the primary option available to the City to adjust to this loss would be to reduce the approved General Fund expenditure budget; and

WHEREAS, given the \$1.8 million that was cut in the Fiscal Year 2010 budget in order to maintain a stable tax rate for that year, a mid-year expenditure reduction of this magnitude would require the elimination of city services and staff.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH PORTLAND THAT

The City Council opposes the November ballot question that would significantly decrease the automobile excise tax for the following reasons:

- Reducing the excise tax will increase the City's reliance on the property tax and likely require property tax increases to maintain essential services otherwise funded through excise taxes;
- The excise tax is often more closely related to ability to pay than the property tax in that it reflects the value of the vehicle purchased and drops over time as vehicles age;
- The excise tax, in conjunction with State provided local road assistance, closely approximates the amount the City spends annually on summer and winter road maintenance; in effect, functioning as a form of user fee for street maintenance;
- 29% of the vehicles currently registered in South Portland would see no change in their excise tax since they are six years old or older;
- If approved, these reductions would go into effect in the middle of the City's budget year, requiring significant expenditure reductions, much of which could only be accomplished through eliminating services and positions.

Fiscal Note: Less than \$1,000

Dated: September 21, 2009



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Agenda for City Council Workshop of: September 28, 2009

Meeting Begins: 6:30 P.M.




Location: Community Center

Amended:




Click [here](#) if you are having difficulties reading the attached agenda items. Documents are typically Microsoft Word but some may be Adobe PDF files and Microsoft Excel.

[Agenda](#)








1. Citizen Survey 6:30 p.m.

-  [Position Paper](#)
-  [NESPMP Overview](#)
-  [Survey Instrument](#)

2. Armory Conditional Zone 7:05 p.m.

-  [Position Paper](#)
-  [Ordinance](#)
-  [Planning Board Report](#)

3. TABOR II Initiative - November 3, 2009 Election 7:45 p.m.

-  [Position Paper](#)
-  [Colorado Papers](#)
-  [TABOR Resolution \(Bangor\)](#)
-  [Overview of TABOR II](#)
-  [LD 976 TABOR II](#)
-  [LD 1 vs TABOR II Limits](#)
-  [LD 1 2008 Report](#)

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City Council Workshop

Agenda Item #3

September 28, 2009

TABOR II Initiative –
November 3, 2009 Election

This item is brought forward for further discussion regarding the TABOR II Initiative which is on the November 3, 2009 Election. If this initiative is passed, it will significantly change the budget landscape in South Portland.

Unlike the first TABOR initiative, which focused on local spending, TABOR II is directed at restraining the growth in state and local government by imposing expenditure limitations by requiring a procedure of voter approval of certain state tax increases. Under the bill, growth in annual expenditures of the General Fund, the Highway Fund and other Highway Fund budgets are limited according to increases in population and inflation.

Under this bill, a state tax increase would require a majority vote in both the Senate and House of Representatives, and a majority approval of the voters. State expenditure limits contained in the bill could be exceeded by a majority vote of the Legislature and majority approval by the voters. Municipal and county LD 1 expenditure limits could be exceeded by a majority approval by the voters of that local district, which is different from current practice of only needing a majority vote of sitting Council/Board of Selectman.

In addition, this bill will require counties and municipalities to use a model cost center budget summary already developed by the Department of Audit and require information in that format to be made available to local voters, filed annually with the Maine Revenue Service and posted on any publicly accessible website maintained by the applicable county or municipality as well as the Maine Revenue Service's website.


City Manager



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Agenda for City Council Meeting of: October 5, 2009

Meeting Begins: 7:00 P.M.

Location: Council Chambers

Amended:

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 [Agenda](#)

A. Acceptance of Minutes

 [Minutes 09-21-09](#)

B. Communications from City Manager

C. Petitions and Communications

D. Appointment Calendar

1. ORDER #103-08/09

Economic Development Committee, District One (Coward) to fill a term which expires on 03/23/12. Postponed since 03/16/09. Passage requires majority vote.

Postponed 7-0

 [Position Paper](#)

2. ORDER #104-08/09

Economic Development Committee, District Two (Smith) to fill a term which expires on 03/23/12. Postponed since 03/16/09. Passage requires majority vote.

Postponed 7-0

 Position Paper**3. ORDER #01-09/10**

Library Advisory Board, District Two (Smith), to fill an unexpired term which expires on 12/31/10. Postponed since 07/06/09. Passage requires majority vote.

Postponed 7-0

 Position Paper**4. ORDER #12-09/10**

Board of Appeals, District Two (Smith), to fill a term which expires on 07/23/12. Postponed since 7/20/09. Passage requires majority vote.

Postponed 7-0

 Position Paper**5. ORDER #19-09/10**

Library Advisory Board, At Large (Boudreau), to fill an unexpired term which expires on 12/31/11. Postponed since 08/03/09. Passage requires majority vote.

Postponed 7-0

 Position Paper**6. ORDER #48-09/10**

Voter Registration Appeals Board, Republican appointment, to fill a term which expires 09/29/10. Postponed on 09/21/09. Passage requires majority vote.

Postponed 7-0

 Position Paper**7. ORDER #49-09/10**

Voter Registration Appeals Board, Democrat appointment, to fill a term which expires 09/29/10. Postponed on 09/21/09. Passage requires majority vote.









Postponed 7-0

 Position Paper

E. Consent Calendar**G. Public Hearings and Action****F. Citizen Discussion (First Part)****G. Public Hearings and Action****H. Action on Old and New Business****8. ORDER #54-09/10**

Accepting miscellaneous donations. Passage requires majority vote.







Passed 7-0

-  [Position Paper](#)
-  [Order](#)
-  [Mill Creek Park Donation](#)
-  [Donation Memo Bug Light Stones](#)
-  [Parks Donation](#)
-  [Fire Donations](#)
-  [Police Donations](#)
-  [Downeast Classic](#)

9. RESOLVE #2-09/10

Indicating the opposition of the City of South Portland to the November ballot question seeking to modify current State law on tax and expenditure limitations on State and local government. Passage requires majority vote.



Passed 7-0

-  [Position Paper](#)
-  [Resolve](#)
-  [Presentation](#)
-  [Washington State TABOR Info](#)
-  [Overview of TABOR II](#)
-  [LD 976 TABOR II](#)

10. RESOLVE #3-09/10

Approving an Appropriation Transfer Resolve for FY 2009. Passage requires majority vote.

Passed 7-0

-  [Position Paper](#)
-  [Resolve](#)

I. Citizen Discussion (Second Part)

K. Executive Session

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Meeting of October 5, 2009

**South Portland City Council
Position Paper of the City Manager**

Subject:

RESOLVE #2 -09/10 - Indicating the opposition of the City of South Portland to the November ballot question seeking to modify current State law on tax and expenditure limitations on State and local government. Passage requires majority vote.

Position:

The November 3, 2009 ballot includes the TABOR II Initiative, which if passed will significantly change the budget landscape in South Portland.

Unlike the first TABOR initiative, which focused on local spending, TABOR II is directed at restraining the growth in state and local government by imposing expenditure limitations by requiring a procedure of voter approval of certain state tax increases. Under the bill, growth in annual expenditures of the General Fund, the Highway Fund and other Highway Fund budgets are limited according to increases in population and inflation.

Under this bill, a state tax increase would require a majority vote in both the Senate and House of Representatives, and a majority approval of the voters. State expenditure limits contained in the bill could be exceeded by a majority vote of the Legislature and majority approval by the voters. Municipal and county LD 1 expenditure limits could be exceeded by a majority approval by the voters of that local district, which is different from current practice of only needing a majority vote of sitting Council/Board of Selectman.

In addition, this bill will require counties and municipalities to use a model cost center budget summary already developed by the Department of Audit and require information in that format to be made available to local voters, filed annually with the Maine Revenue Service and posted on any publicly accessible website maintained by the applicable county or municipality as well as the Maine Revenue Service's website.

This item was discussed at the September 14th and 28th workshops. This resolve is brought forward to formally pass a resolve expressing the City's opposition to this ballot question seeking to modify current State law on tax and expenditure limitation on State and local governments.

Requested Action:

Council passage of Resolve #2-09/10.


City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL RESOLVE #2-09/10

District One
THOMAS S. COWARD

District Two
PATRICIA A. SMITH

District Three
JAMES A. SOULE

District Four
MAXINE BEECHER

District Five
JAMES HUGHES

At Large
LINDA R. BOUDREAU

At Large
THOMAS E. BLAKE

Resolve, Indicating the Opposition of the City of South Portland to the November Ballot Question Seeking to Modify Current State Law on Tax and Expenditure Limitations on State and Local Government.

WHEREAS, since 2005, local governments in Maine have operated under a state law that limits the extent to which the property tax may increase in any given year and that requires the local governing body to vote on a separate article to exceed that limit; and

WHEREAS, this law also imposes expenditure limitations on State Government; and

WHEREAS, the purpose of this legislation was to limit state spending and the municipal property tax levy in an effort to reduce the tax burden on our citizens and reduce Maine's national ranking on tax burden; and

WHEREAS, since it was adopted, it has achieved its stated purpose, with current State spending and municipal property taxes both below targeted levels; and

WHEREAS, the City of South Portland municipal tax commitment for Fiscal Year 2010 is more than \$1.1 million below the state established limit; and

WHEREAS, this citizen initiative, also known as TABOR II, will make changes to the current spending and property taxation limits that apply to all levels of government in Maine; and

WHEREAS, it will impose growth limits on all state spending, including the State's Highway Fund, where the current law places limits only on the State's General Fund; and

WHEREAS, TABOR II will establish Fiscal Year 2010 as the baseline year for all future growth in State spending, a year where both the State General Fund and Highway Fund will experience significant revenue declines; thus, this proposal will lock in State spending at current depressed levels reflecting the impact of the current recession on State revenues; and

WHEREAS, current State spending limits are calculated on a cumulative basis allowing the amount spending is below the limit to be carried forward to future years thus allowing some flexibility in State spending and providing an incentive to spend below statutory levels; TABOR II will base the following year's spending level on that of the current year, thus creating a "use it or lose it incentive;" and

WHEREAS, TABOR II will require statewide voter approval for virtually all tax increases and expenditure increases above the growth limit, a requirement that entails significant additional state and local election expenditures and additional costs associated with its requirement that certain notices and financial information be mailed to every registered voter in the State at an estimated cost of \$800,000 for each mandated referendum; and

WHEREAS, at the municipal and county level, TABOR II also mandates referendum voting to approve any budget that exceeds the municipal or county property tax limit; and

WHEREAS, it also requires municipalities and counties to adopt a uniform budget format as developed by the State Planning Office; and

WHEREAS, both of these requirements will add costs that must be borne by local government and its citizens; and

WHEREAS, TABOR II, if approved, will dramatically move state and local government in Maine in the direction of budgeting by referendum, the results of which have become apparent in those States where this has already happened; and

WHEREAS, it will limit the flexibility of both the State and its local governments to react to changing conditions, community needs, and economic conditions and undermine the authority of elected officials to make budgetary and service decisions based on information and a depth of analysis unlikely to be undertaken by the average voter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH PORTLAND THAT,

For the following reasons, the City Council opposes the so-called TABOR II question that will appear on the November ballot and which would significantly modify current limits on State spending and on the municipal property tax levy:

- The spending and levy limits established in current state law have been achieving their stated goal of reducing the tax burden on Maine citizens;
- The requirement that state spending above the spending limit and most tax increases be subject to approval at a statewide referendum will increase both state and local expenses and move toward a system of budgeting by referendum which, as shown by experience elsewhere, is an ineffective way to make budgetary and service level decisions;

- By establishing the current year as the basis from which future state spending increases are to be calculated, state spending, particularly for the highway fund, will be starting from a depressed level reflecting the impact of the current recession;
- Tax policy, budgets, and service levels are best decided through the core processes of representative government where the people elect individuals and charge them with the responsibility of making decisions based on data, analysis, debate, and public opinion while balancing the need for services and expenditures that address the common good with the ability of citizens to pay for such services.

BE IT FURTHER RESOLVED THAT,

We urge all citizens to become fully informed on this proposal prior to the November election by becoming familiar with the language of the proposal and reviewing materials provided by those supporting and opposing this measure.

Fiscal Note: Less than \$1,000

Dated: October 5, 2009

STATE LAW LIBRARY
AUGUSTA, MAINE

1973
initiated
ballot
question
reporting

ACTS, RESOLVES AND CONSTITUTIONAL RESOLUTIONS

AS PASSED BY THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

Published by the Director of Legislative Research in accordance with the Revised Statutes of 1964, Title 3, Section 164, Subsection 6.

THE KNOWLTON AND MCLEARY COMPANY
FARMINGTON, MAINE
1973

CHAPTER 591

AN ACT Relating to Contributions and Expenditures to Influence Direct Initiative or Referendum Legislation.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, direct initiative or referendum of legislation is a right of the people under the Constitution of Maine; and

Whereas, the public has the right to know the nature of compensation used to influence such legislation during this process; and

Whereas, the following legislation is urgently needed to assure such disclosure thereby preventing possible fraud and undue harm; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 21, § 1391-A, additional. Title 21 of the Revised Statutes is amended by adding a new section 1391-A to read as follows:

§ 1391-A. Contributions and expenditures for direct initiative or referendum legislation

Notwithstanding any other provision of law, any person, corporation, public or private utility, association, governmental agency or political committee accepting or expending money, to initiate, promote or defeat the public referendum of direct initiative legislation within the meaning of the Constitution of Maine or the state-wide public referendum of any statute shall be required starting on July 1, 1973 to file a report detailing the source, amount and date of receipt of all contributions and expenditures made in connection with any such referendum thereafter at the end of each month during such activity to file a report similarly detailing all such contributions and expenditures for that month. The Secretary of State shall establish such forms as may be necessary for efficient reporting under this section; and in any event said reports must be signed and sworn to before a notary public by the person responsible for filing the report.

Sec. 2. R. S., T. 21, § 1, sub-§ 4-A, additional. Section 1 of Title 21 of the Revised Statutes, as amended, is further amended by adding a new subsection 4-A to read as follows:

4-A. Candidate. "Candidate" means any person who has filed a petition pursuant to either sections 445 and 446 or sections 492 and 493 and has qualified as a candidate by either procedure.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective July 3, 1973

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492 and 493 and has quali-

CHAPTER 592

AN ACT Reforming the Administration of the Property Tax and Replacing the Tax on Inventories with an Increased Corporate Income Tax.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, § 283, sub-§ 7, additional. Section 283 of Title 5 of the Revised Statutes, as amended by section 3 of chapter 615 of the public laws of 1971, is further amended by adding a new subsection 7 to read as follows:

7. Bureau of Property Taxation. The Bureau of Property Taxation, the head of which shall be the State Director of Property Taxation.

Sec. 2. R. S., T. 30, § 5056, additional. Title 30 of the Revised Statutes is amended by adding a new section 5056 to read as follows:

§ 5056. Reimbursement to municipalities for revenue loss due to certain personal property tax exemptions

1. Definitions. As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. Exempted personal property. "Exempted personal property" shall mean the personal property exempted in Title 36, section 655, subsection 1, paragraphs A, B, C and D.

B. Revenue loss. "Revenue loss" shall be construed to mean the actual tax assessed with respect to the exempted personal property, as defined, for the tax year beginning April 1, 1973, less the tax assessed under Title 36, section 455 with respect to certain personal property.

2. Reimbursement for revenue loss. The Treasurer of State shall reimburse each municipality on or before December 15th, annually, for any revenue loss due to personal property exempted under Title 36, section 655, subsection 1, paragraphs A, B, C and D.

Sec. 3. R. S., T. 36, c. 4, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 4 to read as follows:

CHAPTER 4

BUREAU OF PROPERTY TAXATION

§ 71. Bureau; director

The Bureau of Property Taxation, as heretofore created and established, shall be under the control and supervision of the State Director of Property

on," as used in this
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Sec. 5. Application. The valuation changes in sections 3 and 4 of this Act shall apply to appropriations and apportionments made after the filing of the 1975 state valuation.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except section 2 of this Act shall become effective when reimbursements are made for the 1976-77 winter season.

Effective July 1, 1975. unless otherwise indicated

CHAPTER 621

AN ACT to Create the Commission on Governmental Ethics and Election Practices.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. MRSA c. 25 is enacted to read:

CHAPTER 25

GOVERNMENTAL ETHICS

SUBCHAPTER I

STATEMENT OF PURPOSE

§ 1001. Statement of purpose

It is essential under the American system of representative government that the people have faith and confidence in the integrity of the election process and the Members of the Legislature. In order to strengthen this faith and confidence that the election process reflects the will of the people and that each Legislator considers and casts his vote on the enactment of laws according to the best interests of the public and his constituents, there is created an independent commission on governmental ethics and election practices to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct by Legislators.

§ 1002. Commission on Governmental Ethics and Election Practices

1. Membership. The Commission on Governmental Ethics and Election Practices, hereinafter called the "commission," shall consist of 7 members to be appointed as follows:

A. The President of the Senate and the floor leaders of the 2 major parties in the Senate shall each appoint one member, with the concurrence of $\frac{2}{3}$ vote of the Senate. Each such member shall be appointed in January of each even-numbered year, and shall serve a term of 2 years from the date of appointment or until his successor is appointed and qualified.

B. The Speaker of the House and the floor leaders of the 2 major parties in the House of Representatives shall each appoint one member, with the concurrence of $\frac{2}{3}$ vote of the House of Representatives. Each such member shall be appointed in January of each even-numbered year, and shall

serve a term of 2 years from the date of appointment or until his successor is appointed and qualified.

C. The 6 members so appointed shall, by an affirmative vote of at least 5 members, elect a 7th member, who shall act as chairman, and who shall serve a term of 2 years, or until his successor is appointed and qualified.

The appropriate appointing authority shall appoint members to vacancies on the commission as they shall occur or upon expiration of terms. Any vacancy shall be filled for the unexpired portion of the term in which such vacancy occurs.

2. Qualifications. The members of the commission shall be persons of recognized judgment, probity and objectivity. No person shall be appointed to this commission who is a Member of the Legislature or who was a Member of the previous Legislature, or who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, or who now holds an elective county, state or federal office.

3. Oath. Each member shall, within 10 days of his appointment, take an oath of office to faithfully discharge the duties of a commissioner in the form prescribed by the Constitution. Such oath shall be subscribed to by the commissioner taking it, certified by the officer before whom it is taken and immediately filed in the Office of the Secretary of State.

4. Expenses. The members of the commission shall be reimbursed for all necessary expenses that they may incur through service as commissioners, including expenses for travel, which shall be paid in the same manner as travel expenses are paid to Members of the Legislature.

5. Employees. The commission may employ such assistance as may be necessary to carry out its duties.

§ 1003. Procedures, rules and regulations

1. Procedures, rules and regulations. The commission shall adopt such procedures, rules and regulations as may appear necessary for the orderly, prompt, fair and efficient carrying out of its duties, consistent with this Act.

2. Records. Except as provided in section 1013, subsection 2, paragraph J, all records of the commission, including business records, reports made to or by the commission, findings of fact and opinions, shall be made available to any interested member of the public who may wish to review them. Any member of the public may request copies of any record held by the commission which is available for public inspection. The commission shall furnish these copies upon payment of a fee covering the cost of reproducing them.

§ 1004. Meetings

The President of the Senate and the Speaker of the House shall jointly call an organizational meeting of the commission within 10 days after the members have taken their oaths of office. Thereafter, the commission shall on the call of the Secretary of State or of the Speaker of the House or the President of the Senate to perform the duties required of it or as specifically provided in this Act. The commission shall also meet at other times at the

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§ 1005. Open meetings

Notwithstanding any other provision of law, all meetings, hearings or sessions of the commission shall be open to the general public unless, by an affirmative vote of at least 6 members, the commission requires the exclusion of the public.

§ 1006. Assistance

The commission may call for the aid or assistance in the performance of its duties on the Attorney General, Secretary of State, Department of Audit or any law enforcement agency in this State. When called upon, these agencies shall comply to the utmost of their ability.

§ 1007. Annual report

The commission shall submit to the Legislature and the public an annual report discussing its activities under this chapter.

§ 1008. General duties

The general duties of the commission shall be:

1. Legislative ethics. To investigate and make advisory recommendations to the appropriate body of any apparent violations of the ethical standards set by the Legislature;
2. Election practices. To administer and investigate any violations of the requirements for campaign reports and campaign financing and to investigate and determine the results, within the limits of the Constitution, of any contested county, state or federal election within this State.

SUBCHAPTER II

LEGISLATIVE ETHICS

§ 1011. Statement of purpose

The Maine Legislature enjoys a high reputation for progressive accomplishment. The vast majority of its members are public officers of integrity and dedication, seeking at all times to maintain high standards of ethical conduct.

The public interest is best served by attracting and retaining in the Legislature men and women of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government "of the services of all but princes and paupers."

Membership in the Legislature is not a full-time occupation and is not compensated on that basis; moreover, it is measured in 2-year terms, requiring each member to recognize and contemplate that his election will not provide him with any career tenure.

Most Legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families; moreover, they must plan for the day when they must return to private employment, business or their professions.

The increasing complexity of government at all levels, with broader intervention into private affairs, makes conflicts of interest almost inevitable for all part-time public officials, and particularly for Legislators who must cast their votes on measures affecting the lives of almost every citizen or resident of the State. The adoption of broader standards of ethics for Legislators does not impugn either their integrity or their dedication; rather it recognizes the increasing complexity of government and private life and will provide them with helpful advice and guidance when confronted with unprecedented or difficult problems in that gray area involving action which is neither clearly right nor clearly wrong.

If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct.

The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience. The Legislature may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety.

§ 1012. Definitions

As used in this subchapter, the following words shall have the following meanings unless the context otherwise indicates.

1. Close economic association. "Close economic association" includes the employers, employees, partners or clients of the Legislator or a member of his immediate family; corporations in which the Legislator or a member of his immediate family is an officer, director or agent or owns 10% or more of the outstanding capital stock; a business which is a significant unsecured creditor of the Legislator or a member of his immediate family or a business of which the Legislator or a member of his immediate family is a significant unsecured creditor.

2. Immediate family. "Immediate family" shall mean a Legislator's spouse and dependent children.

3. Income. "Income" shall mean economic gain to a person from whatever source derived, including, but not limited to, the following items: Compensation for services including fees, commissions and payments in kind; income derived from business; gains derived from dealings in property, rents and royalties; income from investments including interest, capital gains and dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust and prizes, awards, grants and gifts.

§ 1013. Authority; procedures

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A. To issue, on request of any Legislator on an issue involving himself, or on its own motion, advisory opinions and guidelines on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to, the Legislature;

B. To investigate complaints filed by Legislators alleging conflict of interest against any Legislator, to hold hearings thereon and to issue publicly findings of fact together with its opinion; and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

2. Procedure. The following procedures shall apply:

A. Requests for advisory opinions by Members of the Legislature shall be filed with the commission in writing, signed by the Legislator requesting the opinion and shall contain such supporting data as the commission shall require. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow him to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it deems necessary. A copy of the commission's advisory opinion shall be sent to the Legislator concerned and to the presiding officer of the House of which the Legislator is a member;

B. A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall be given written notification of the time and place at which the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing.

D. The commission shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the committee deems relevant. The commission shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents which the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall have jurisdiction and authority to require com-

pliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross-examination.

Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.

All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall be referred to the Attorney General. Any determination by the commission or by a House of the Legislature that a conflict of interest has occurred does not preclude any criminal action relating to the conflict which may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is groundless and without foundation, or if the Legislator filing the complaint fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed his costs of investigation and defense, including any reasonable attorney's fees. The complainant may appeal such an order to the House of which he is a member.

Such an order shall not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to his reputation.

H. A copy of the commission's advisory opinions and guidelines, with such deletions and changes as the commission deems necessary to protect the identity of the person seeking the opinions, or others, shall be filed with the Clerk of the House. The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof from release, publication or inspection, if it deems such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

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I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators shall also be filed with the Clerk of the House. The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.

K. When a Legislator has a question or problem of an emergency nature about a possible conflict of interest or an issue involving himself which arises during the course of legislative action, he may request an advisory opinion from the presiding officer of the legislative body of which he is a member. The presiding officer may, at his discretion, issue an advisory opinion, which shall be in accordance with the principles of this subchapter, which shall be in writing, and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

§ 1014. Conflict of interest

1. A conflict of interest shall include the following:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation.

B. Where a Legislator or a member of his immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on his part.

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator.

D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen.

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immedi-

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2. Reports. When the commission finds that a Legislator has voted or acted in conflict of interest, the commission shall report its findings in writing to the House of which the Legislator is a member.

§ 1016. Statement of sources of income

Each Member of the Senate and House of Representatives shall file a statement of sources of income for the preceding calendar year with the commission prior to the close of the 2nd week in February of each year. Sources of income need not be indicated by name, but shall be indicated by category or type of business entity or economic activity in such manner as shall be determined by the commission.

§ 1017. Form; contents

The statement of sources of income filed under this subchapter shall be on a form prescribed by the commission and shall be a matter of public record. The Legislator filing the statement shall reveal each source of income to him or any member of his immediate family exceeding a value of \$300 in the aggregate during the preceding year. Campaign contributions, duly recorded as required by law, shall not be considered income for the purposes of this statement. Income received in kind, including but not limited to the transfer of property, options to buy or lease and stock certificates, shall be reported by identifying both the source and the particular nature of the income.

The Legislator filing shall indicate those state agencies before which he has represented or assisted others for compensation during the preceding year. The Legislator filing shall also indicate those state agencies to which he or any member of his immediate family has sold goods or services during the preceding year.

In addition to the foregoing requirements, attorneys-at-law shall indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm, in such manner as the commission shall require.

§ 1018. Updating statement

A Legislator shall file an updating statement with the commission on a form prescribed by the commission within one month of any addition, deletion or change to the information relating to the preceding year supplied under this subchapter.

§ 1019. False statement; failure to file

The willful filing of a false statement shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than 11 months. If the commission concludes that it appears that a Legislator has willfully filed a false statement, it shall refer its findings of fact to the Attorney General.

If the commission determines that a Legislator has willfully failed to file a statement required by this subchapter, the Legislator shall be presumed to have a conflict of interest on every question and shall be precluded or punished as provided in section 1015.

§ 1020. Penalty for false accusations

Any person who files a false and groundless charge of a conflict of interest with the commission or any member of the commission or whoever induces

ate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

2. Undue influence. It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent, except for attorneys or other professional persons engaged in the conduct of their professions.

(1) Even in the excepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.

B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding.

3. Abuse of office or position. It is presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization.

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs.

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

§ 1015. Actions precluded; reports

1. Actions precluded. When a Member of the Legislature has a conflict of interest, he shall not vote on any question in connection with the conflict in committee or in either branch of the Legislature, and shall not attempt to influence the outcome of that question.

another to do so shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

§ 1021. Membership on boards, authorities or commissions

It shall not be a conflict of interest for a Legislator to serve on a public board, authority or commission created by the Legislature so long as there is no consideration paid to the Legislator other than his actual expenses.

Sec. 2. 3 MRSA c. 15, as amended, is repealed.

Sec. 3. 3 MRSA c. 19, as amended, is repealed.

Sec. 4. 21 MRSA § 925, sub-§ 1, last sentence, is amended to read:

If the challenged ballot affects the result of an election, its validity must be determined by the Governor and Council subject to the right of appeal provided in section 1212, except where final determination of the election of a candidate is governed by the State or Federal Constitution or under Title 1, chapter 25.

Sec. 5. 21 MRSA § 1094 is repealed.

Sec. 6. 21 MRSA § 1095, 1st ¶ is amended to read:

Within a reasonable time after an election, the Governor shall issue an election certificate in accordance with Title 5, section 84 or a notice of apparent election to each person elected to office according to the tabulation required by section 1092, or on appeal according to the determination of the Governor and Council or on the determination of the Commission on Governmental Ethics and Election Practices, as provided under chapter 36.

Sec. 7. 21 MRSA § 1153 is repealed and the following enacted in place thereof:

§ 1153. Appeals

On written application of a candidate, the Commission on Governmental Ethics and Election Practices shall hear an appeal, as provided under chapter 36.

Sec. 8. 21 MRSA § 1154, first sentence, as last amended by PL 1965, c. 425, § 14, is further amended to read:

Any resident of the municipality affected may inspect referendum ballots, have them recounted and appeal those disputed to the Governor and Council as provided in section ~~1151 to 1153~~ section 1152, except statewide referendum shall be appealed to the Commission on Governmental Ethics and Election Practices as provided under chapter 36.

Sec. 9. 21 MRSA c. 35, as last amended by PL 1973, c. 756, is repealed and the following enacted in place thereof:

CHAPTER 35

CAMPAIGN REPORTS AND FINANCES

§ 1391. Purpose; legislative finding of fact; applicability

1. The Legislature finds and declares that it is in the best interests of the people of the State of Maine to place certain limits on expenditures by or on behalf of candidates for political office. The Legislature, while recognizing the right of the citizens of the State of Maine to support the political candidates of their choice and while recognizing the right of those candidates to present their views to the citizens, also is cognizant that abuses in the election process can occur through the expenditure of disproportionate sums of money to influence the minds of the voters and further recognizes that an attempt should be made to correct these abuses and to equalize presentations in order that citizens may have a more balanced view of the positions and platforms of political candidates. The Legislature further finds that the expenditure of large sums of money by any one individual or organization results in undue influence over the electoral process. The Legislature desires to minimize the effects of these problems and therefore the Legislature further finds that the imposition of certain expenditure limits, which it feels, after careful study, are properly limited to the end sought to be achieved, will not result in the abridgement of any constitutional freedoms of the citizens or candidates, such as freedom of speech, and will not interfere with the right of those persons to participate fully in the election process.

2. This chapter applies to candidates for all state and county and federal offices and to campaigns for their nomination and election.

3. As used in this chapter, the term "commission" means the Commission on Governmental Ethics and Campaign Practices established pursuant to Title I, section 1002.

§ 1392. Contributions and expenditures for direct initiative or referendum legislation

Notwithstanding any other provision of law, any person, corporation, public or private utility, association, governmental agency or political committee accepting or expending money, to initiate, promote or defeat the public referendum of direct initiative legislation within the meaning of the Constitution of Maine or the state-wide public referendum of any statute shall be required, starting on the effective date of this Act, to file a report detailing the source, amount and date of receipt of all contributions and expenditures made in connection with any such referendum thereafter at the end of each month during such activity to file a report similarly detailing all such contributions and expenditures for that month. The commission shall establish such forms as may be necessary for efficient reporting under this section, and in any event said reports must be signed and sworn to before a notary public by the person responsible for filing the report.

§ 1393. Treasurer required for each political committee

Each political committee must appoint a treasurer before accepting or spending any money.

§ 1394. Registration of treasurer

A candidate or political committee shall advise the commission of the name and address of its treasurer within 7 days after his appointment, the candidate or committee by which he was appointed, and his term of office.

§ 1395. Registration of officers

In addition to the registration of its treasurer, a political committee shall submit to the commission the names and addresses of all of its officers, whether or not said committee expends any money for the purposes set forth in section 1397.

§ 1396. Collection of money

Only a treasurer or a candidate may accept money to promote or defeat a candidate.

1. Limitation. This does not prohibit the receipt of contributions by a solicitor to be transferred to a treasurer; or the acceptance of money by a person who furnishes goods or services.

§ 1397. Disbursement of money

Only a treasurer or a candidate may spend money to promote or defeat a candidate.

1. Limitation. This does not prohibit contributions to a candidate, political committee or party by a person other than a treasurer or candidate, or the spending of his own money by any person, except as otherwise provided herein.

2. Certain spending prohibited. The spending of money for alcoholic beverages on election day is prohibited.

3. Limitations on expenditures. The following provisions shall govern expenditures by candidates for the offices of Governor, United States Senator, United States Representatives and candidates for other political offices.

A. Primary election. No candidate for the office of Governor, United States Senator, United States Representative or candidate for other political office in a primary election shall make or authorize expenditures on behalf of such candidacy in excess of 25¢ multiplied by the number of votes cast for all legally qualified candidates for such office in the last preceding general election for such office.

B. General election. No candidate for the office of Governor, United States Senator, United States Representative or candidate for other political office in a general election shall make or authorize expenditures on behalf of such candidacy in excess of 50¢ multiplied by the number of votes cast for all legally qualified candidates for such office in the last preceding general election for such office.

"Other political office" means all political offices other than Governor, United States Senator and United States Representative.

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4. Limitation on expenditures from personal funds. No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination or election to political office, whether in a primary election or general election in excess of:

A. \$35,000 in the case of a candidate for the office of Governor or United States Senator;

B. \$25,000 in the case of a candidate for United States Representative; or

C. \$5,000 in the case of candidates for political offices other than those mentioned in paragraphs A and B.

The totals mentioned in this subsection are cumulative with respect to the primary and general elections and are to be included in the totals allowable under subsection 3.

For the purposes of this subsection, "immediate family" means a candidate's spouse, any child, parent, grandparent, brother or sister of the candidate and the spouse of such persons.

5. Expenditures defined. For the purposes of this subsection, "expenditures" means a purchase, payment, distribution, loan, advance, deposit, gift of money or the gift of or use of corporate facilities or personnel or property, the gift of or use of anything of value, the transfer of funds, except for an arm's-length loan of money made by a national or state bank or credit union in accordance with applicable laws and except for the provision of services to a candidate rendered without compensation by individuals volunteering their time on behalf of a candidate or political committee. Expenditures shall further include, but not be limited to, all moneys or other valuable things expended for political advertising and mailings and funds dispensed by or on behalf of a candidate.

6. Expenditure in behalf of. Amounts spent on behalf of any candidate for political office, as specified in subsections 3 and 4, shall be deemed to have been spent by such candidate.

7. —by others. No person, association, corporation or combination thereof shall dispense funds on behalf of a candidate for public office without written approval of said candidate.

8. Against a candidate. No person, association, corporation or combination thereof shall dispense funds against a candidate for public office and thereby be indirectly supporting the candidacy of another without the written approval of the beneficiary thereof.

9. Filing. The written approval required by subsections 7 and 8 shall be filed with the commission within 48 hours of the time it is executed. It shall be the responsibility of the commission to turn over all data pertaining to alleged violations to the Attorney General for action.

10. Accept contributions; authorize expenditures. No candidate or political committee shall knowingly accept any contribution or authorize any expenditure in violation of this section.

11. Make or authorize expenditures. For the purposes of this section, "make or authorize expenditures on behalf of such candidacy" shall refer to expenditures made within 6 months immediately preceding the date of the election with reference to which the candidacy applies, whether primary or general.

12. Written political material. All written political material published and distributed as a flyer, handbill or other nonperiodical publication shall state thereon the name of the person or committee responsible for the publication or distribution of the material or the name of the print shop, printer or person printing, mimeographing or otherwise publishing the material.

13. Federal law controlling. In the event that any of the provisions of this section are in conflict with applicable federal statutes relating to expenditures by political candidates, the federal statute shall be controlling.

14. Penalty. Anyone violating this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

§ 1398. Records

Each treasurer and each candidate shall keep detailed records of all money received or spent and liability incurred by him in the campaign including the name and address of each donor, the amount given, the name and address of each payee or creditor, the amount spent or liability incurred and the purpose.

§ 1399. Reports

Campaign reports must be filed with the commission by each candidate and by the treasurer of each candidate or political committee.

1. Exception. The treasurer of a municipal committee shall not file campaign reports with the commission but the amounts of money received and spent, and the liabilities incurred by his committee shall be filed with the treasurer of the county committee, who shall forward such reports with the county committee report to the commission.

2. Exception. The state committees of the major political parties and candidates for federal office and the treasurers of the political committees of such candidates shall file one copy of the completed report required of them by federal law with the commission on the same day as required by federal law. Candidates for Governor and the treasurers of their political committees shall file a report of the same form and content on the same dates as required of federal candidates by the federal law, except for the first campaign report, which shall be filed on or before April 10th of the election year and except for the final campaign report, which shall be filed not later than 45 days after the election.

3. When filed. A report must be filed with the commission within 45 days after any election showing the totals of the entire campaign. In addition, a report must be filed with the commission no later than 45 days prior to any election showing the totals of the campaign to that date. After filing the foregoing report, the disposition of any surplus or deficit shown on this

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commission within 45 days of the campaign. In addition, 45 days prior to the date. After filing the report shown on this

report shall be reported to the commission every 3 months until such time as such surplus shall have been disposed of or such deficit shall have been liquidated.

4. State Auditor. The State Auditor shall serve as a staff agency to the commission in making investigations of any phase of the commission's work under this subchapter and shall have all necessary powers to carry out his responsibilities.

5. Content. The report must contain the itemized amounts of money received to date and the name and address of each donor. It must contain the itemized amounts of money spent and liability incurred to date, the purpose of each and the name of each payee and creditor.

A. Exceptions. The name and address of a donor of less than \$50 need not be included. Total contributions or total expenditures of less than \$100 need not be itemized.

§ 1400. Failure to file report on time

A person who fails to file a campaign report within the time required by this subchapter shall be assessed not more than \$5 for each day he is in default by the commission unless he is excused by the commission.

1. Disqualified. If the assessment is not paid at the order of the commission the person becomes disqualified and his name shall not be printed on an official ballot used at any election held during the same calendar year.

2. Appeal. A person aggrieved by an order of the commission may appeal to the Superior Court within 5 days after being notified of the decision, by presenting a written complaint. The court shall fix a time and place for immediate hearing. It shall order notice of the hearing to be given to the commission. Within 7 days after the hearing, the court shall affirm, modify or reverse the decision of the commission and its decision is final.

§ 1401. —meetings

The commission shall meet and review the campaign reports as follows:

1. Regular election. It shall meet in Augusta to review the final campaign reports for the regular primary or general election within 7 days after the filing date provided by section 1399.

2. Special election. It shall meet before or after a special election as necessary.

§ 1402. Investigations

The commission may investigate for the purpose of determining the facts concerning money received or spent, or liability incurred, by any treasurer, candidate or political committee. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person who fails to obey the lawful subpoena of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the commission.

1. Investigation requested. Any person may make written application to the commission requesting an investigation, and stating his reasons for it. The commission shall review the application and shall make the investigation if the reasons stated, taken as true, show sufficient grounds for it.

2. Attorney General counsel. The Attorney General is counsel for the commission. He shall examine the witnesses before the commission.

3. Violations punished. The Attorney General shall prosecute any person who fails to account for any money received or spent, or liability incurred, as required by this chapter.

Sec. 10. 21 MRSA c. 36 is enacted to read:

CHAPTER 36

ELECTION PRACTICES—RECOUNT OF ELECTIONS

§ 1421. Jurisdiction

The commission shall have full and final jurisdiction consistent with the Federal and State Constitutions for the final determination of election results in elections for county, state or federal offices that are contested.

§ 1422. Appeal to commission

If, after the recount proceeding provided under this Title, there are challenged ballots which affect the result of an election to state or federal office, the validity of such ballots shall be determined by the commission. Either candidate for such office may appeal to the commission, in writing, not more than 5 days after completion of the recount proceedings. Such written appeal shall set forth in detail the grounds for the appeal.

§ 1423. Procedure

The following procedures shall apply:

1. Notice of hearing. On receipt of a written appeal, the commission shall notify the opposing candidate, and shall set a time, date and place for a hearing on the matter. Such hearing shall be held within 10 days after completion of the recount.

2. Review; findings. The commission shall conduct such review and hold such hearings as it shall deem necessary, including a review of the contested ballots. On completion of such review and hearings, the commission shall make findings of fact and an opinion on the final determination of the election.

3. Report. Where the Constitution of this State or of the United States Constitution provides for final determination of the election of a candidate, the commission shall transmit to the body vested with final determination powers a copy of the findings of fact and opinion. In all other cases, the commission shall issue a final ruling on the determination of the election

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of a candidate, certify such ruling to the Secretary of State for preparation and delivery to the Governor and Council, and to each candidate, and shall make available to the public its findings of fact and opinion.

4. Record. The commission shall keep a record of its proceedings under this subchapter which shall be available to the general public.

§ 1424. Questions of law

An appeal from a final determination of the commission may be taken to the Supreme Judicial Court on questions of law, if taken within 3 days of certification of the final result by the commission, as follows:

1. Appeal procedure. The appellant shall file the required number of copies of the record of the commission's review with the clerk of courts within 5 days after filing notice of appeal. Within 10 days after the appeal is taken, the parties shall file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall consider the case forthwith. The court shall not recount the ballots, but shall determine the questions of law. The court shall hand down its decision as soon as reasonably possible and shall issue its decision and an order to the commission, requiring their review in compliance with the decision, if necessary. The court shall allow costs to the prevailing party as justice may require.

2. Commission's duties. The commission shall review its determination in conformity to the court's decision and orders, and if that determination is changed, shall certify the new determination in the manner provided under section 1423.

§ 1425. Referendum ballots

Any resident of the State affected by the results of a statewide referendum may make a written request for a recount in the same manner as a losing candidate. "Referendum" shall mean an election for the determination of any question or proposition submitted to the voters.

Sec. 11. 21 MRSA § 1578, sub-§ 9, is amended to read:

9. Registration of treasurer. The Secretary of State Commission on Governmental Ethics and Election Practices shall keep the registration of a treasurer under section 1393 in his office for 2 years.

Sec. 12. 21 MRSA § 1578, sub-§ 11, as amended by PL 1971, c. 26 is further amended to read:

11. Campaign reports. The Secretary of State Commission on Governmental Ethics and Election Practices shall keep the campaign reports in his office for 2 years or until the expiration of the term of office to which the candidate aspired or was elected, whichever is longer.

Sec. 13. Appropriation. There is appropriated from the General Fund to the Commission on Governmental Ethics and Election Practices for the biennium the sum of \$10,000. The breakdown shall be as follows:

COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES

All Other \$3,750 \$6,250

Sec. 14. Effective date. This Act shall take effect January 1, 1976.

Effective January 1, 1976

CHAPTER 622

AN ACT to Reform the State Retirement System.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 1001, sub-§ 9, as amended by PL 1965, c. 186, § 1, is further amended to read:

9. Earnable compensation. "Earnable compensation" shall mean actual compensation, including maintenance if any, but shall not include payment for more than 30 days of accumulated or accrued sick leave or unused vacation leave or a combination of both, nor include any other payment which is not compensation for actual services rendered or which is not paid at the time such services are rendered. In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in money. Any money paid by a school administrative unit an employer under an annuity contract for the future benefit of an employee shall be considered part of the employee's earnable compensation.

Sec. 2. 5 MRSA § 1001, sub-§ 9, as last amended by PL 1965, c. 186, § 1, is further amended by adding a new paragraph at the end to read:

The earnable compensation of a member retired with a disability retirement allowance under section 1122 shall be assumed, for the purposes of determining benefits under this chapter, to be continued after his date of termination of service at the same rate as received immediately prior thereto, subject to the same percentage adjustments, if any, that may apply to the amount of retirement allowance of the beneficiary under section 1128.

Sec. 3. 5 MRSA § 1001, sub-§ 10-A, as enacted by PL 1971, c. 17, § 1, is repealed.

Sec. 4. 5 MRSA § 1001, sub-§§ 10-B and 10-C, are enacted to read:

10-B. Executive body. "Executive body" shall mean the official or body of officials who, in their official capacity, have the general powers and duties of administering, supervising and managing the affairs of an organization or governmental unit.

10-C. Fiduciary. "Fiduciary" shall mean either a bank or professional investment management.

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

§ 408. Public records available for public inspection

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

§ 409. Appeals

1. Records. If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. Proceedings not exclusive. The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

§ 410. Violations

A willful violation of any requirement of this subchapter is a Class E crime.

Effective July 29, 1976

CHAPTER 759

AN ACT Relating to Campaign Reports and Finances.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the laws on election campaign reports and finances must be revised as a result of the U. S. Supreme Court's decision of January 30, 1976; and

Whereas, this revision must be completed as soon as possible in order that political campaigns in 1976 may be conducted under constitutional guidelines and without a change of the laws in the course of the campaign; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 MRSA c. 35, as repealed and replaced by PL 1975, c. 621, § 9, is repealed and the following enacted in place thereof:

CHAPTER 35

CAMPAIGN REPORTS AND FINANCES

§ 1391. Application

This chapter applies to candidates for all state and county offices and to campaigns for their nomination and election.

§ 1392. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings:

1. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established pursuant to Title 1, section 1002;

2. Contribution. "Contribution" includes:

A. A gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business, made for the purpose of influencing the nomination or election of any person to state or county office;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;

C. Funds received by a candidate or a political committee which are transferred to such candidate or committee from another political committee or other source; and

D. The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons which are

rendered to such candidate or political committee without charge for any such purpose.

E. "Contribution" does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of such activities by such individual on behalf of any candidate does not exceed \$50 with respect to any election;

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverages to the vendor and if the cumulative value of such food or beverage does not exceed \$50 with respect to any election;

(4) Any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate, if the cumulative amount for such individual incurred with respect to such candidate does not exceed \$50 with respect to any election; or

(5) The payment by a state, district, county or local committee of a political party of the costs of preparation, display or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot or other printed listing of 3 or more candidates for any political office.

3. Election. "Election" includes any primary, general or special election for state or county offices.

4. Expenditure. "Expenditure" includes:

A. A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, except a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business, made for the purpose of influencing the nomination or election of any person to political office;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;

C. The transfer of funds by a candidate or a political committee to another candidate or political committee; but does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate;

(2) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

(3) Any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of such activities by such individual on behalf of any candidate does not exceed \$50 with respect to any election;

(5) Any unreimbursed payment for travel expenses made by an individual who, on his own behalf, volunteers his personal services to a candidate, if the cumulative amount for such individual incurred with respect to such candidate does not exceed \$50 with respect to any election;

(6) Any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;

(7) The payment by a state, district, county or local committee of a political party of the costs of preparation, display or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any political office for which an election is held; or

(8) The use or distribution of any communication, as described in section 1394, prepared for a previous election and fully paid for during that election campaign which was not used or distributed in that previous election.

5. Person. "Person" means an individual, committee, firm, partnership, corporation, association or any other group or organization of persons.

§ 1393. Treasurer; political committees

1. Candidates. A candidate may accept contributions personally or make or authorize expenditures personally. A candidate may appoint a treasurer to accept contributions or to make or authorize expenditures. A candidate who appoints a treasurer shall advise the commission of the name and address of such treasurer, of the name and address of the candidate making the appointment and of the treasurer's term of office, if any, within 7 days after such appointment.

2. Authorized political committees. A candidate may authorize one or more political committees for the purpose of promoting such candidate. Each such political committee shall appoint a treasurer before accepting any contributions or making or authorizing any expenditures. Such political committee shall inform the commission of the name and address of such treasurer within 7 days after such appointment; the name or title of the committee making the appointment and the treasurer's term of office. In addition to the registration of its treasurer, a political committee authorized by a candidate

shall submit to the commission the names and addresses of all of its officers, whether or not said committee accepts any contributions or makes or authorizes any expenditures.

3. Other political committees. A political committee which is not authorized by a candidate but which accepts any contributions or makes or authorizes any expenditures for the purpose of promoting or defeating a candidate or candidates shall appoint a treasurer before accepting any contributions or making or authorizing any expenditures. Such political committee shall inform the commission of the name and address of such treasurer within 7 days after such appointment, the name or title of the committee making the appointment, the name of the candidate or candidates it intends to promote or defeat and the treasurer's term of office. In addition to the registration of its treasurer, such a political committee shall submit to the commission the names and addresses of all of its officers.

§ 1394. Publication or distribution of political statements

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, such communication, if authorized by a candidate, a candidate's authorized political committee or their agents, shall clearly and conspicuously state that the communication has been so authorized and shall clearly state the name and address of the person who made or financed the expenditure for the communication.

If such communication is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication shall clearly and conspicuously state that the communication is not authorized by any candidate, and state the name and address of the person who made or financed the expenditure for the communication.

Any such communication expressly advocating the promotion or defeat of any principle, initiative or referendum question shall clearly and conspicuously state the name and address of the person, public utility or governmental agency that made or financed the expenditure for the communication.

No person operating a broadcasting station within this State shall broadcast any such communication without announcing the name of the person who made or financed the expenditure for the communication.

§ 1395. Limitations on contributions and expenditures

1. Individuals. No individual, other than a candidate or a member of a candidate's immediate family, shall make contributions to a candidate, in support of the candidacy of one person, in an aggregate amount greater than \$1,000 in any election. For the purposes of this subsection, "immediate family" includes a candidate's spouse and any child, parent, grandparent, brother or sister of the candidate and the spouse of such persons.

2. Committees; corporations; associations. No political committee, other committee, corporation or association shall make contributions to a candidate,

in support of the candidacy of one person, in an aggregate amount greater than \$5,000 in any election.

3. Aggregate contributions. No individual, other than a candidate or a member of a candidate's immediate family, shall make contributions to candidates aggregating more than \$25,000 in any calendar year.

4. Political committees, intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf shall be considered to be contributions made to such candidate.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the commission and to the intended recipient.

5. Other contributions and expenditures. Expenditures made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents shall be considered to be a contribution to such candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's campaign committee or their authorized agents shall be considered to be a contribution to such candidate.

6. Certain expenditures prohibited. The expenditure of money for alcoholic beverages to be distributed to or consumed by voters while the polls are open on election day is prohibited.

§ 1396. Records

Each treasurer or each candidate shall keep detailed records of all contributions received and of each expenditure which such treasurer or candidate makes or authorizes, as provided in this section.

1. Account of contributions; segregated funds. Every person who receives a contribution in excess of \$10 for a candidate or a political committee shall, on demand of the treasurer or candidate, and in any event within 5 days after receipt of such contribution, render to the treasurer or candidate a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of such committee.

2. Recordkeeping. It shall be the duty of a treasurer or of a candidate to keep a detailed and exact account of:

A. All contributions made to or for such candidate or committee;

ate amount greater than \$10, and the date and amount thereof and, if a person's contributions in any election aggregate more than \$50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship;

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B. The identification of every person making a contribution in excess of \$10, and the date and amount thereof and, if a person's contributions in any election aggregate more than \$50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship;

C. All expenditures made by or on behalf of such committee or candidate; and

D. The identification of every person to whom any expenditure is made and the date and amount thereof.

3. Receipts preservation. It shall be the duty of a treasurer or of a candidate to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee or a candidate in excess of \$50 in amount, and for any such expenditure in a lesser amount if the aggregate amount of any such expenditures to the same person in any election exceeds \$50. The treasurer or candidate shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the commission.

§ 1397. Reports

1. State and county candidates. Campaign reports shall be filed with the commission by each candidate for state and county office and by the treasurer of each political committee and by the treasurer of each county committee. However, the treasurer of a municipal committee shall not file campaign reports with the commission, but the amounts of money received and spent and the liabilities incurred by his committee shall be filed with the treasurer of the county committee, who shall forward such reports with the county committee report to the commission.

2. Federal and gubernatorial candidates; parties. The state committees of the political parties and the candidates for federal office and the treasurers of the political committees of such candidates shall file one copy of the completed report required of them by federal law with the commission on the same day as required by federal law. Candidates for Governor and the treasurers of their authorized political committees shall file a report of the same form and on the same dates as required of federal candidates by the federal law, except for the first campaign report, which shall be filed on or before April 10th of the election year and except for the final campaign report, which shall be filed not later than 45 days after the election. Such report shall contain the same information required by this chapter.

3. Reports on certain other campaigns. Any person, public utility or governmental agency which accepts contributions in an aggregate amount in excess of \$50 or makes or authorizes expenditures in an aggregate amount in excess of \$50 to initiate, promote or defeat a referendum pursuant to the Constitution, Article IV, Part 3, Section 17, or an initiative pursuant to the Constitution, Article IV, Part 3, Section 18, or to promote or defeat an amendment to the Constitution, pursuant to the Constitution, Article X, Section 4, legislation expressly conditioned upon ratification by a referendum vote, or the ratification of the issue of bonds by the State or any agency thereof shall file with the commission a report of the source, amount and date of all such contributions and expenditures at the end of every month during which such

contributions are accepted or such expenditures are made or authorized for such purpose. In addition, a report shall be filed with the commission within 45 days after the date of filing of any initiative petitions or the date of any election, referred to in this subsection showing the totals of contributions and expenditures to such date. In addition, a report must be filed with the commission within 45 days after the date of any such election showing the totals of contributions and expenditures.

4. Reports by other persons. Every person, other than a candidate or a candidate's authorized political committee, who makes contributions or expenditures expressly advocating the election or defeat of a clearly identified candidate, other than by contribution to a candidate or a candidate's authorized political committee, in an aggregate amount in excess of \$50 within a calendar year shall file a report with the commission.

Such report shall contain an itemized account of each expenditure in any election of an aggregate amount of \$50 or more, the purpose of each and the name of each payee or creditor. Such report shall contain an itemized account of each contribution in any election of an aggregate amount of \$50 or more received, the name and address of each such contributor and the occupation and principal place of business, if any, of such contributor. Such report shall state whether the contribution or expenditure is in support of or in opposition to the candidate and shall include, under penalty of perjury, a certification whether such expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

Reports required by this subsection shall be filed on the dates on which reports by candidates are to be filed under subsection 5.

Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

5. When filed. A report for a candidate for state or county office, other than that of Governor, shall be filed with the commission not later than 5 p.m. on the 7th day before the date on which an election is held and shall be complete as of the 11th day before the date of such election. Such report shall set forth the required accounts of contributions and expenditures made within 6 months immediately preceding the date of the 11th day before the date of the election. If a report has been filed for the same candidacy for a primary election in the same calendar year, such report shall set forth the required accounts of contributions and expenditures made since the date of last report on the primary election. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

In addition, a report shall be filed with the commission within 45 days after any election, showing the totals of the entire election campaign. After filing such final report, the disposition of any surplus or deficit shown on this report shall be reported to the commission every 3 months until such time as such surplus shall have been disposed of or such deficit shall have been liquidated.

6. Content. The report shall contain the itemized accounts of contributions received and the name and address of each person who has made a contribution of an aggregate amount of \$50 or more for that election. It shall

made or authorized for the commission within the date of any contributions and shall be filed with the commission showing the totals

contain the itemized accounts of expenditures made or authorized, the purpose of each and the name of each payee and creditor. Total contributions of less than \$500, except when contributions in any election by one person in an aggregate amount of \$50 or more are included, and total expenditures of less than \$500 need not be itemized.

7. The Secretary of State shall prepare forms for the reports required by this chapter. A person preparing such reports may use additional pages if necessary, but such pages shall be of the same size as the pages of the form.

§ 1398. Failure to file report on time

The failure of any person required to file a report under this chapter within the time required by this chapter is a civil violation. There shall be a penalty of \$10 for each day that the report is late. The commission shall report any such failure to the Attorney General, who may enforce such violation in a civil action to collect the amount of the penalty. Such action shall be brought in the Superior Court for the County of Kennebec or in the District Court, 7th District, Division of Southern Kennebec.

§ 1399. Meetings

The commission shall meet in Augusta and review the reports required under this chapter within 7 days after each filing date provided in this chapter.

§ 1400. Investigations

1. Investigations. The commission may investigate to determine the facts concerning contributions by or to and expenditures by any person or candidate. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person who fails to obey the lawful subpoena of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the Attorney General on behalf of the commission.

2. Investigation requested. Any person may make written application to the commission requesting an investigation and stating the reasons for the request. The commission shall review the application and shall make the investigation if the reasons stated show sufficient grounds for believing that a violation may have occurred.

3. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and shall have all necessary powers to carry out such responsibilities.

4. Attorney General. The Attorney General shall be the counsel for the commission and may examine any witnesses before the commission. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

§ 1401. Violations

No candidate or person shall knowingly accept any contribution or make any expenditure in violation of the provisions of this chapter. No officer or

employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this chapter.

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

No candidate or person shall make a false statement in any report required by this chapter.

§ 1402. Penalty

Any violation of any provision of this chapter for which a penalty is not otherwise provided shall be a Class E crime. The Attorney General shall prosecute any such violation.

Sec. 2. 21 MRSA § 1421, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in place thereof:

§ 1421. Jurisdiction

The Commission on Governmental Ethics and Election Practices, established pursuant to Title 1, section 1002 and hereafter in this chapter referred to as the "commission," shall make findings of fact and opinion on the final determination of election results in primary, general and special elections for county, state or federal offices that are contested.

Sec. 3. 21 MRSA § 1422, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in place thereof:

§ 1422. Appeal to commission

If, after the recount proceeding provided under this Title, there are challenged ballots which affect the result of a primary, general or special election involving county, state or federal office, the commission shall make findings of fact and opinion on the validity of such ballots. Any candidate for such office may appeal to the commission, in writing, not more than 5 days after completion of the recount proceedings. Such written appeal shall set forth in detail the grounds for the appeal.

Sec. 4. 21 MRSA § 1423, sub-§ 3, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in place thereof:

3. Reports.

A. Elections for Governor, Legislature, federal office. In cases involving elections, where the Constitution of this State or the United States Constitution provides for final determination of the election of a candidate, the commission shall transmit to the body vested with final determination powers a copy of the findings of fact and opinion.

B. County office. In cases involving general and special elections for county office, the commission shall transmit a copy of the findings of fact and opinion to the Secretary of State for preparation and delivery to the Governor, and to each candidate, and shall make available to the public its findings of fact and opinion. The Governor shall make the final determination in such cases, subject to the right of appeal provided in section 1212.

C. Other elections. In all other cases involving primary, general and special elections, the commission shall transmit a copy of the findings of fact and opinion to the Secretary of State for preparation and delivery to the Governor, and to each candidate, and shall make available to the public its findings of fact and opinion. The Governor shall make the final determination in such other cases.

Sec. 5. 21 MRSA § 1575, as amended by PL 1969, c. 215, § 2, is repealed.

Sec. 6. 21 MRSA § 1579, sub-§§ 9, 10, 11, 12, 16, 25 and 27 are repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 14, 1976

CHAPTER 760

AN ACT Relating to the Geologists and Soil Scientists Certification Act.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 2301, sub-§ 1, as last amended by PL 1975, c. 547, §§ 1-3, is further amended by adding at the end the following:

State Board of Certification for Geologists and Soil Scientists.

Sec. 2. 5 MRSA § 2301, sub-§ 1, ¶ L is enacted to read:

L. Persons licensed under Title 22, section 42, subsection 3-A.

Sec. 3. 22 MRSA § 42, sub-§ 3, as repealed and replaced by PL 1973, c. 521, § 1, is amended to read:

3. Plumbing and subsurface sewage disposal. The department shall adopt rules and regulations relating to plumbing and subsurface sewage disposal systems and the installation and inspection thereof consistent with Title 30, sections 3221 to 3225 and Title 32, sections 3301 to 3507; and shall hold hearings on the first Tuesday of February and August of each year for the purpose of considering changes in the rules and regulations pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. The department shall prior to adopting or amending rules and regu-

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AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

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CHAPTER 575

AN ACT Relating to Campaign Reports and Finances.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 MRSA § 1, sub-§ 4-A, as enacted by PL 1973, c. 591, § 2, is amended to read:

4-A. Candidate. "Candidate" means any person who has filed a petition pursuant to either sections 445 and 446 or sections 492 and 493 and has qualified as a candidate by either procedure or any person who has received contributions or made expenditures or has given his consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate.

Sec. 2. 21 MRSA § 1392, sub-§ 1-A, is enacted to read:

1-A. Clearly identified. "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears;
- B. A photograph or drawing of the candidate appears; or
- C. The identity of the candidate is apparent by unambiguous reference.

Sec. 3. 21 MRSA § 1392, sub-§ 2, ¶ A, as enacted by PL 1975, c. 759, § 1, is amended to read:

A. A gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business, made for the purpose of influencing the nomination or election of any person to state or county office or for the purpose of liquidating any campaign deficit of a candidate;

Sec. 4. 21 MRSA § 1392, sub-§ 2, ¶ E, sub-¶ (5), as enacted by PL 1975, c. 759, § 1, is amended to read:

(5) The payment by a state, district, county or local municipal committee of a political party of the costs of preparation, display or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot or other printed listing of 3 or more candidates for any political office.

Sec. 5. 21 MRSA § 1392, sub-§ 4, ¶ C, sub-¶ (7), as enacted by PL 1975, c. 759, § 1, is amended to read:

(7) The payment by a state, district, county or local municipal committee of a political party of the costs of preparation, display or mailing

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337-352 \$23
353-369 \$27

370-386 \$32

or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any political office for which an election is held; or

Sec. 6. 21 MRSA § 1393, sub-§ 4 is enacted to read:

4. Party committees. The state, district and county committees of parties shall submit to the commission the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 days after the appointment, election or hiring of such persons.

The municipal committees of parties shall, on or before April 30th of each year in which a general election is held, submit to the commission the names and addresses of their chairmen, secretaries and treasurers. Thereafter, each municipal committee shall file an updating statement with the commission within 30 days of any addition, deletion or change to this information.

The state committee of a party may submit a consolidated report including the required information for the district, county and municipal committees of that party.

Sec. 7. 21 MRSA § 1394, as last repealed and replaced by PL 1975, c. 759, § 1, is repealed and the following enacted in its place:

§ 1394. Publication or distribution of political statements

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, such communication, if authorized by a candidate, a candidate's authorized political committee or their agents, shall clearly and conspicuously state that the communication has been so authorized and shall clearly state the name and address of the person who made or financed the expenditure for the communication.

If such communication is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication shall clearly and conspicuously state that the communication is not authorized by any candidate, and state the name and address of the person who made or financed the expenditure for the communication.

No person operating a broadcasting station within this State shall broadcast any such communication without announcing the name of the person who made or financed the expenditure for the communication.

Sec. 8. 21 MRSA § 1395, sub-§ 1, as enacted by PL 1975, c. 759, § 1, is amended to read:

1. Individuals. No individual, other than a candidate in making a contribution to himself or a member of a candidate's immediate family, candidate's spouse in making a contribution to that candidate, shall make contributions to a candidate, in support of the candidacy of one person, in an aggregate

amount greater than \$1,000 in any election. For the purposes of this subsection, "immediate family" includes a candidate's spouse and any child, parent, grandparent, brother or sister of the candidate and the spouse of such persons.

Sec. 9. 21 MRSA § 1395, sub-§ 3, as enacted by PL 1975, c. 759, § 1, is amended to read:

3. Aggregate contributions. No individual, other than a candidate in making a contribution to himself or a member of a candidate's immediate family, candidate's spouse in making a contribution to that candidate, shall make contributions to candidates aggregating more than \$25,000 in any calendar year.

Sec. 10. 21 MRSA § 1395, sub-§ 5, 2nd ¶, as enacted by PL 1975, c. 759, § 1, is amended to read:

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's campaign political committee or committees or their authorized agents shall be considered to be a contribution to such candidate.

Sec. 11. 21 MRSA § 1395, sub-§ 6, as enacted by PL 1975, c. 759, § 1, is repealed and the following enacted in its place:

6. Certain expenditures prohibited. A candidate, a political committee, a party or a committee thereof, a person required to file a report under this chapter or their authorized agents shall not make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

Sec. 12. 21 MRSA § 1396, sub-§ 3, last sentence, as enacted by PL 1975, c. 759, § 1, is amended to read:

The treasurer or candidate shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the commission 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court.

Sec. 13. 21 MRSA § 1397, as last repealed and replaced by PL 1975, c. 759, § 1, is repealed and the following enacted in its place:

§ 1397. Reports

1. Party committees. When a state, district, county or municipal committee of a party makes contributions or expenditures expressly advocating the election or defeat of a candidate or candidates, other than by contribution to a candidate or a candidate's authorized political committee, in an aggregate amount in excess of \$50 with respect to one candidate in an election, such committee shall file a report with the commission. Such report shall contain an itemized account of each such expenditure in any election of an aggregate amount in excess of \$50, the purpose of each and the name of each payee or creditor. Such report shall contain an itemized account of each such contribution in any election of an aggregate amount in excess of \$50 received, the

name and address of each such contributor and the occupation and principal place of business, if any, of such contributor.

Reports required by this subsection in relation to a candidate for Governor shall be filed on the same dates on which reports for such candidates are to be filed under subsection 3. Reports required by this subsection in relation to a candidate for state or county office other than the office of Governor shall be filed on the same dates on which reports for such candidates are to be filed under subsection 4.

2. Federal candidates; parties. The state committee of each party, each candidate for federal office and the treasurer of the political committee or committees of each such candidate shall file with the commission, on the same date that such reports are required to be filed under federal law, a copy of the complete report required of them under federal law.

3. Gubernatorial candidates. Each candidate for the office of Governor or the candidate's treasurer and the treasurer of each political committee authorized by such a candidate shall file reports with the commission as follows.

A. In any calendar year other than a year in which an election for Governor is held and in which the candidate and the candidate's political committee or committees received contributions in excess of \$1,000 or made expenditures in excess of \$1,000, reports shall be filed not later than 5 p.m. on January 15th of the following calendar year, or if that date falls on a Saturday or Sunday, not later than 5 p.m. on the following Monday, and shall be complete as of the close of the calendar year with respect to which the report is filed.

B. Reports shall be filed not later than 5 p.m. on the 42nd day before the date on which an election is held and shall be complete as of the 49th day before such date. If no report was filed under paragraph A, the report required under this paragraph shall cover the 6 months immediately preceding the completion date.

C. Reports shall be filed not later than 5 p.m. on the 7th day before the date on which an election is held and shall be complete as of the 11th day before such date.

D. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

E. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and shall be complete for the entire election campaign as of the 35th day after such date.

F. Unless further reports shall be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit shown in the reports described in paragraph E shall be reported to the commission every 90 days from the date of the reports, until the surplus shall have been disposed of or the deficit shall have been liquidated. The reports shall set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

G. Unless otherwise specified in this subsection, reports shall be complete

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H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor shall be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election.

4. Other candidates. Each candidate for state or county office, other than for the office of Governor, or such candidate's treasurer and the treasurer of each political committee authorized by a candidate shall file reports with the commission as follows.

A. Reports shall be filed not later than 5 p.m. on the 7th day before the date on which an election is held and shall be complete as of the 11th day before such date. The first reports filed in a year in which an election is held shall cover the 6 months immediately preceding the completion date. Other reports shall be complete from the completion date of any previous report with respect to any election in the same year.

B. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

C. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and shall be complete for the entire election campaign as of the 35th day after such date.

D. Unless further reports shall be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit shown in the reports described in paragraph C shall be reported to the commission every 90 days from the date of such reports, until such surplus should have been disposed of or such deficit shall have been liquidated. Such reports shall set forth any contributions for the purpose of liquidating such deficit, in the same manner as contributions are set forth in other reports required in this section.

E. Reports with respect to a candidate who seeks nomination by petition shall be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

5. Other persons. Each person, other than a candidate or a candidate's authorized political committee, who makes contributions or expenditures expressly advocating the election or defeat of a clearly identified candidate, other than by contribution to a candidate or a candidate's authorized political committee, in an aggregate amount in excess of \$50 with respect to an election shall file a report with the commission. Such report shall contain an itemized account of each such expenditure, in any election, of an aggregate amount in excess of \$50 the purpose of each and the name of each payee or creditor. Such report shall contain an itemized account of each such contribution, in any election, of an aggregate amount in excess of \$50 received, the name and address of each such contributor and the occupation and principal place of business, if any, of such contributor. Such report shall state whether

the contribution or expenditure is in support of or in opposition to the candidate and shall include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether such expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

Any membership organization or corporation which makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenditures in an aggregate amount in excess of \$50 for such communication in any election, whether or not such communication is defined as an expenditure under section 1392, subsection 4, paragraph C, subparagraph (3).

Reports required by this subsection in relation to a candidate for Governor shall be filed on the same dates on which reports for such candidates are to be filed under subsection 3. Reports required by this subsection in relation to a candidate for state or county office other than the office of Governor shall be filed on the same dates on which reports for such candidates are to be filed under subsection 4.

6. Content. A report required under this section shall contain the itemized accounts of contributions received and the name, address, occupation and principal place of business, if any, of each person who has made a contribution of an aggregate amount in excess of \$50 for that election. It shall contain the itemized expenditures made or authorized, the purpose of each and the name of each payee and creditor. Total contributions with respect to an election of less than \$500, except when contributions in any election by one person in an aggregate amount in excess of \$50 are included, and total expenditures of less than \$500 need not be itemized. Such report shall contain a statement of any loan of money in an aggregate amount of \$500 or more to a candidate by a financial institution made during the period covered by the report, whether or not such loan is defined as a contribution under section 1392, subsection 2, paragraph A.

7. Forms. Reports required by this chapter shall be on forms prescribed by the commission and prepared by the Secretary of State. Persons filing such reports may use additional pages if necessary, but such pages shall be of the same size as the pages of the form.

Sec. 14. 21 MRSA § 1398, as last repealed and replaced by PL 1975, c. 759, § 1 is repealed and the following enacted in its place:

§ 1398. Failure to file report on time

There shall be a penalty of \$10 for each day that a report required to be filed under this chapter is late. The commission shall determine whether a report received after the date required by this chapter is late.

The commission, upon determining that a report is late, shall notify the Secretary of State of such lateness. The Secretary of State shall have initial responsibility for collecting the full amount of any penalty within 30 days after receiving from the commission notice of a report's lateness. The Secretary of State shall have all necessary powers to carry out this responsibility.

Failure to pay the full amount of any penalty levied under the provisions of this section is a civil violation. Thirty days after receiving notice of the lateness of any report, the Secretary of State shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce such violation in a civil action to collect the full amount outstanding of the penalty. Such action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

Sec. 15. 21 MRSA § 1399, as last repealed and replaced by PL 1975, c. 759, § 1, is repealed and the following enacted in its place:

§ 1399. Meetings

The commission shall meet for the purposes of this chapter and chapter 35-A in Augusta at least 4 times during any year in which primary and general elections are held. The commission shall meet at other times on the call of the Secretary of State, the Speaker of the House, the President of the Senate, the chairman or a majority of the members, provided all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

Sec. 16. 21 MRSA § 1400, sub-§ 2, as last repealed and replaced by PL 1975, c. 759, § 1, is amended to read:

2. Investigations requested. Any person may make written application to the commission requesting an investigation concerning contributions by or to and expenditures by any person or candidate. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

Sec. 17. 21 MRSA c. 35-A, is enacted to read:

CHAPTER 35-A

REPORTS ON REFERENDUM CAMPAIGNS

§ 1411. Application

This chapter applies to campaigns for the initiation, promotion or defeat of questions.

§ 1412. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Campaign. "Campaign" means a campaign for the initiation, promotion or defeat of a question, including:

A. The referendum procedure pursuant to the Constitution, Article IV, Part Third, Section 17;

- B. The initiative procedure pursuant to the Constitution, Article IV, Part Third, Section 18;
- C. An amendment to the Constitution pursuant to the Constitution, Article X, Section 4;
- D. Legislation expressly conditioned upon ratification by a referendum vote pursuant to the Constitution, Article IV, Part Third, Section 19; and
- E. The ratification of the issue of bonds by the State or any agency thereof.

2. Commission. "Commission" means the Commission on Governmental Ethics and Campaign Practices established pursuant to Title I, section 1002.

3. Contribution. "Contribution" includes:

- A. A gift subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing a campaign or referendum;
- B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;
- C. Funds received by a person for such purposes which are transferred to such person from another person, a political committee or other source; and
- D. The payment, by any person other than a person required to make a report under this chapter, of compensation for the personal services of other persons which are rendered to such campaign without charge for any such purpose; but does not include:
 - (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a campaign;
 - (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual in rendering voluntary personal services for campaign-related activities, if the cumulative value of such activities by such individual on behalf of any campaign does not exceed \$50 with respect to any campaign;
 - (3) The sale of any food or beverage by a vendor for use in a campaign at a charge less than the normal comparable charge, if such charge for use in a campaign is at least equal to the cost of such food or beverages to the vendor and if the cumulative value of such food or beverage does not exceed \$50 with respect to any campaign; or
 - (4) Any unreimbursed payment for travel expenses made by an individual who, on his own behalf, volunteers his personal services to a campaign if the cumulative amount for such individual incurred with respect to such campaign does not exceed \$50 with respect to any campaign.

4. Expenditure. "Expenditure" includes:

A. A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a campaign or referendum;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditures; and

C. The transfer of funds to another person for purposes of influencing a campaign or referendum; but does not include:

(1) Nonpartisan activity designed to encourage individuals to register to vote, or to vote;

(2) Any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing a campaign or referendum;

(3) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual in rendering voluntary personal services for campaign-related activities, if the cumulative value of such activities by such individual on behalf of any campaign do not exceed \$50 with respect to any campaign; or

(4) Any reimbursed payment for travel expenses made by an individual who, on his own behalf, volunteers his personal services to a campaign if the cumulative amount for such individual incurred with respect to such campaign does not exceed \$50 with respect to any campaign.

5. Person. "Person" means an individual, committee, firm, partnership, corporation, association, public utility, governmental agency or any other group or organization of persons.

§ 1413. Reports

1. Who must file. Any person who accepts contributions in an aggregate amount in excess of \$50 or makes expenditures in excess of \$50 with respect to any campaign shall file a report with the commission, as provided in this section. Any person who is required under this subsection to file a report shall file a report for each filing period in subsection 2, whether or not contributions or expenditures are in excess of \$50 in any one period.

2. Filing dates. Reports shall be filed with the commission according to the schedule in this section. A report shall cover the 6 months immediately preceding the reporting date or the period since the completion date of a previous report on the same campaign.

A. In the case of the referendum procedure pursuant to the Constitution, Article IV, Part Third, Section 17, and of the initiative procedure pursuant to the Constitution, Article IV, Part Third, Section 18, a report shall be filed with the commission not later than 5 p.m. on the 14th day after the final date provided in the Constitution for filing petitions under such procedure and shall be complete as of such final date.

B. A report shall be filed with the commission not later than 5 p.m. on the 42nd day before the date of the referendum and shall be complete as of the 49th day before the date of the referendum.

C. A report shall be filed with the commission not later than 5 p.m. on the 7th day before the date of the referendum and shall be complete as of the 11th day before the date of the referendum.

D. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any referendum, shall be reported within 48 hours of such contribution or expenditure.

E. A report shall be filed not later than 5 p.m. on the 42nd day after the date on which a referendum is held and shall be complete for the entire campaign as of the 35th day after such date.

F. The disposition of any surplus or deficit shown in the reports described in paragraph E shall be reported to the commission every 90 days from the date of such report, until such surplus shall have been disposed of or such deficit shall have been liquidated. Such reports shall set forth any contributions for the purpose of liquidating such deficit, in the same manner as contributions are set forth in other reports required in this section.

3. Content. A report required under this section shall contain the itemized accounts of contributions received and the name, address, occupation and principal place of business, if any, of each person who has made a contribution of an aggregate amount in excess of \$50 for that campaign. It shall contain the itemized expenditures made or authorized, the purpose of each and the name of each payee and creditor. Total contributions of less than \$500, except when contributions in any campaign by one person in an aggregate amount in excess of \$50 are included, and total expenditures of less than \$500 need not be itemized.

4. Forms. Reports required by this chapter shall be on forms prescribed by the commission and prepared by the Secretary of State. Persons filing reports may use additional pages if necessary, but such pages shall be of the same size as the pages of the form.

§ 1414. Records

Any person who accepts contributions in an aggregate amount in excess of \$50 or makes expenditures in excess of \$50 with respect to any campaign shall keep records as provided in this section.

1. Account of contributions; segregated funds. Every person who receives a contribution in excess of \$10 for a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of such committee.

2. Record keeping. It shall be the duty of a person or a treasurer to keep a detailed and exact account of:

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A. All contributions made to or for such campaign or to or for a committee;

B. The identification of every person making a contribution in excess of \$10, and the date and amount thereof and, if a person's contributions in any campaign aggregate more than \$50, the account shall include occupation and the principal place of business, if any;

C. All expenditures made by or on behalf of such campaign or committee; and

D. The identification of every person to whom any expenditure is made and the date and amount thereof.

3. Receipts preservation. It shall be the duty of a person or treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a campaign in excess of \$50 in amount, and for any such expenditure in a lesser amount if the aggregate amount of any such expenditures to the same person in any campaign exceeds \$50. The person shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the referendum to which they pertain, unless otherwise ordered by the commission or a court.

§ 1415. Committees

Any political committee which is formed with respect to a campaign shall appoint a treasurer before accepting any contributions or making any expenditures. Such committee shall inform the commission of the name and address of such treasurer within 7 days after such appointment, the name or title of the committee making the appointment and the treasurer's term of office. In addition to the registration of its treasurer, such committee shall submit to the commission the names and addresses of all of its officers.

§ 1416. Publication or distribution of statements

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the initiation, promotion or defeat of a question through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, such communication shall clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication.

No person operating a broadcasting station within this State shall broadcast any such communication without announcing verbally the name of the person who made or financed the expenditure for the communication.

§ 1417. Failure to file report on time

There shall be a penalty of \$10 for each day that a report required to be filed under this chapter is late. The commission shall determine whether a report received after the date required by this chapter is late.

The commission, upon determining that a report is late, shall notify the Secretary of State of such lateness. The Secretary of State shall have initial responsibility for collecting the full amount of any penalty within 30 days after receiving from the commission notice of a report's lateness. The Secretary of State shall have all necessary powers to carry out this responsibility.

Failure to pay the full amount of any penalty levied under the provisions of this section is a civil violation. Thirty days after receiving notice of the lateness of any report, the Secretary of State shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce such violation in a civil action to collect the full amount outstanding of the penalty. Such action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

§ 1418. Investigations

1. Investigations. The commission may investigate to determine the facts concerning contributions by or to any person, and expenditures by any person. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person who fails to obey the lawful subpoena of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the Attorney General on behalf of the commission.

2. Investigations requested. Any person may make written application to the commission requesting an investigation concerning contributions by or to and expenditures by any person or campaign. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

3. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and shall have all necessary powers to carry out such responsibilities.

4. Attorney General. The Attorney General shall be the counsel for the commission and may examine any witnesses before the commission. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

§ 1419. Violations

1. Contributions. No person shall knowingly make or accept any contribution or make any expenditure in violation of the provisions of this chapter.

2. False statement in report. No person shall make a false statement in any report required by this chapter.

§ 1420. Penalty

Any violation of any provision of this chapter for which a penalty is not otherwise provided shall be a Class E crime. The Attorney General shall prosecute any such violation.

Sec. 18. 21 MRSA § 1423, sub-§ 1, 2nd sentence, as enacted by PL 1975, c. 621, § 10, is amended to read:

Such hearing shall be held within 15 days after completion of the recount receipt of the appeal.

Sec. 19. 21 MRSA § 1424, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in its place:

§ 1424. Questions of law

1. Appeals. An appeal from a final decision by the body with final determinative powers pursuant to section 1423 may be taken to the Supreme Judicial Court on questions of law, if taken within 3 days of such final determination, in accordance with the procedure described in subsection 2.

2. Procedure. The appellant shall file the required number of copies of the record of the findings of fact and opinions and any decision issued pursuant to the final determination made by the appropriate body with the clerk of the courts within 5 days after filing notice of appeal. Within 10 days after the appeal is taken, the parties shall file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall consider the case forthwith. The court shall not recount the ballots, but shall determine questions of law. The court shall issue its decision as soon as reasonably possible. The court shall allow costs to the prevailing party as justice may require.

Sec. 20. 21 MRSA § 1425, 2nd sentence, as enacted by PL 1975, c. 621, § 10, is repealed as follows:

"Referendum" shall mean an election for the determination of any question or proposition submitted to the voters.

Effective October 24, 1977

CHAPTER 576

AN ACT to Provide Legislative Oversight of Appropriated Fund Transfers.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 1585, as amended by PL 1975, c. 771, § 72, is repealed and the following enacted in its place:

§ 1585. Transfer of unexpended appropriations

1. Transfers authorized. Any balance of any appropriation or subdivision of an appropriation made by the Legislature for any state department or agency, which at any time may not be required for the purposes named in such appropriation or subdivision, may be transferred at any time prior

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issue immediately a certificate of transfer to the secretary of each school administrative district by registered mail to be filed with the directors of the districts involved and shall file a copy of the certificate of transfer in the office of the Secretary of State.

Sec. 5. 20-A MRSA §1407, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§1407. Closing an elementary school

1. Vote; costs of election. An elementary school in a member municipality of a school administrative district may not be closed unless the voters in the member town vote on the following article in accordance with the procedure set forth in sections 1351 to 1354.

"Article : Shall the board of directors of School Administrative District No. be authorized to close (name of school) ?

Yes No "

(The election shall be conducted only within that member municipality and the costs of the election shall be borne by the district.)

2. Expense of keeping the school open. If the voters vote to keep the school open, the member municipality shall be liable for any additional expense for operating costs, transportation costs, and minor capital costs as defined in section 15503, which exceed by 10% the expense of the district for the operating costs, transportation costs, and minor capital costs as compared on a per pupil basis in the base year. The determination of costs shall be subject to the approval of the commissioner. Any additional costs which must be borne by the member municipality shall be part of the article presented to the voters at the meeting to determine whether the school should remain open.

Effective September 23, 1983.

CHAPTER 365

H.P. 306 - L.D. 365

AN ACT Regulating the Activities of
Political Action Committees.

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Be it enacted by the People of the State of Maine as follows:

21 MRSA c. 38 is enacted to read:

CHAPTER 38

REPORTS BY POLITICAL ACTION COMMITTEES

§1551. Application

This chapter applies to the activities of political action committees organized in this State and which expend in excess of \$50 in any one calendar year for the election of Governor, state or county officers or for the support or defeat of any campaign as defined in this chapter.

§1552. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Campaign. "Campaign" means any course of activities for a specific purpose such as the initiation, promotion or defeat of a candidate or question, including:

A. The referendum procedure pursuant to the Constitution of Maine, Article IV, Part Third, Section 17;

B. The initiative procedure pursuant to the Constitution of Maine, Article IV, Part Third, Section 18;

C. An amendment to the Constitution of Maine pursuant to Article X, Section 4;

D. Legislation expressly conditioned upon ratification by a referendum vote pursuant to the Constitution of Maine, Article IV, Part Third, Section 19; and

E. The ratification of the issue of bonds by the State or any agency thereof.

2. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices, established pursuant to Title 1, section 1002.

3. Committee. "Committee" means any political action committee as defined in this chapter and includes any agent of a political action committee.

4. Contribution. "Contribution" includes:

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A. A gift, subscription, loan, advance or deposit of money or anything of value, except a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business, made to a political action committee as defined in this chapter;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution to a political action committee;

C. Any and all funds received by a political action committee which are to be transferred to any candidate, committee, campaign or organization for the purpose of promoting, defeating or initiating a candidate, campaign referendum, political party or initiative in this State; or

D. The payment, by any person or organization, of compensation for the personal services of other persons rendered to a political action committee which is used by the political action committee for the purpose of promoting, defeating or initiating a candidate, campaign political party, referendum or initiated petition in this State.

5. Expenditure. "Expenditure" includes:

A. A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination or election of any person to political office; or for the initiation, support or defeat of a campaign, referendum or initiative in this State;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in paragraph A; and

C. The transfer of funds by a political action committee to another candidate or political committee, but does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee or candidate;

(2) Nonpartisan activity designed to

encourage individuals to register to vote or to vote;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$50 with respect to any election;

(5) Any unreimbursed payment for travel expenses made by a political action committee which, on its own behalf, volunteers personal services to a candidate, if the cumulative amount for those services to the candidate does not exceed \$50 with respect to any election; and

(6) Any communication by any political action committee member which is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office.

6. Person. "Person" means an individual, committee, firm, partnership, corporation, association or any other group or organization of persons.

7. Political action committee. "Political action committee" includes:

A. Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election including a candidate or question; and

B. Any person, as defined in subsection 6 which serves as a funding and transfer mechanism and by which moneys are expended to advance, promote, defeat, influence in any way, or initiate a candidate, campaign, political party, referendum or initiated petition in this State.

8. Secretary. "Secretary" means the Secretary of State.

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§1553. Registration

Every political action committee which expends or intends to expend in excess of \$50 in any single calendar year to initiate, support, defeat or influence in any way a campaign, a referendum, initiated petition, candidate, political committee or another political action committee shall register with the commission on forms prescribed by the commission. These forms shall include the following information and any additional information reasonably required by the commission or the Secretary of State to monitor the activities of political action committees in Maine under this chapter:

1. Identification of committee. The names and mailing addresses of the committee, its treasurer and its principal officers;

2. Status. A statement whether the political action committee is a continuing one;

3. Depository of funds. The names and addresses of the depositories in which funds of the committee are kept and the account numbers of each depository account;

4. Form of organization. The form or structure of organization including cooperatives, corporations, voluntary associations, partnerships or any other structure by which the committee functions. The date of origin or incorporation shall also be specified;

5. Assets. The total assets of the committee at the time of registration in Maine to be itemized and to include deposits in financial institutions, real property, personal property, investments, cash and any other form of wealth available to the committee;

6. Statement of support or opposition. A statement indicating the position of the committee, support or opposition, with respect to a candidate, political committee, referendum, initiated petition or campaign, if known at the time of registration. If a committee has no position on a candidate, campaign or issue at the time of registration, the committee shall inform the commission as soon as the committee knows this information; and

7. Contributions to committee. The names and mailing addresses of contributors who donate in excess of \$50 each year to the committee with the amount or value of each contribution at the time of registration. Any person, as defined in section 1552, who makes contributions on an installment basis, the total of which exceeds \$50 in the calendar

year, shall be considered a contributor to be identified according to this subsection.

§1554. Appointment of treasurer

Any political action committee, required to register under section 1553, shall appoint a treasurer prior to making any expenditure as defined in this chapter. The treasurer shall retain, for a minimum of 4 years, all receipts including cancelled checks of expenditures made in support of or opposition to a campaign, political committee, political action committee, referendum or initiated petition in this State.

§1555. Reports, qualifications for filing

Any political action committee that expends in excess of \$50 on any one or more campaigns for the office of Governor, for state or county office or for the support or defeat of a referendum or initiated petition shall file a report with the commission on forms as prescribed by the commission, as provided in this section. Any political action committee required under this section to file a report shall file the report for each filing period as defined in sections 1556 and 1557, whether or not the expenditures are in excess of \$50 in any one period.

§1556. Quarterly and annual reports-filing dates

In any calendar year in which there is an election, primary or campaign, a committee, required to register under section 1553, shall file quarterly and annual reports with the commission in addition to the other reports required in this section. The reports required in subsections 1 to 3 shall contain itemized expenditures required by the commission to closely monitor the activities of political action committees, aggregate expenditures for the periods between the filing dates specified and cumulative aggregated expenditures to include all preceding reporting periods. The commission may accept computer print out sheets that contain the information required by this chapter. Following registration, a committee shall comply with the applicable filing periods.

1. General elections. Reports shall be filed no later than 5:00 p.m.:

A. On the 293rd day and shall be complete on the 300th day before the date on which a general election is to be held. The expenditures in this report shall include all previous expenditures, if any, made by the committee to influence, in any way, the outcome of a general election;

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B. On the 205th day and shall be complete on the 210th day prior to the date on which a general election is to be held;

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C. On the 120th day and shall be complete on the 125th day prior to the date on which a general election is to be held;

D. On the 30th day and shall be complete on the 35th day prior to the date on which a general election is to be held; and

E. On the 30th day following the date on which a general election was held, to be complete as of the 25th day following the date of a general election. This report shall be a combined quarterly report and an annual report. It shall aggregate all expenditures made to influence, in any way, the outcome of a general election.

2. Primary elections. Reports shall be filed no later than 5:00 p.m.:

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A. On the 145th day and shall be complete on the 150th day before the date on which a primary election is to be held. The expenditures in this report shall include all previous expenditures, if any, made by the committee to influence, in any way, the outcome of a primary election;

B. On the 85th day and shall be complete on the 90th day before the date on which a primary election is to be held;

C. On the 25th day and shall be complete on the 30th day before the date on which a primary election is to be held; and

D. On the 30th day following the date on which a primary election was held, to be complete on the 25th day following a primary election. This report shall be a combined quarterly report and an annual report. It shall aggregate all expenditures made to influence, in any way, the outcome of a primary election.

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3. Referenda, initiated petitions, bond questions. Reports shall be filed no later than 5:00 p.m.:

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A. On January 10th and shall be complete on January 5th. The expenditures in this report shall include all previous expenditures, if any, made by the committee to influence, in any way, the outcome of a vote on any referendum, initiated petition or bond question;

B. On April 5th and shall be complete on April 1st;

C. On July 10th and shall be complete on July 1st;

D. On October 5th and shall be complete on October 1st; and

E. On December 30th and shall be complete on December 20th. This report shall be a combined quarterly report and an annual report. It shall aggregate all expenditures made to influence the outcome of a vote on a referendum, initiated petition or bond question.

§1557. Filing periods

The dates by which the reports required by this chapter are to be filed are as follows.

1. Reports to be filed by January 15th. In any calendar year, other than a year in which an election for Governor is held, in which a political action committee makes an expenditure in excess of \$50 for the purpose defined in section 1552, subsection 5, shall file reports not later than 5 p.m. on January 15th of the following calendar year, or if that date falls on a Saturday or Sunday not later than 5 p.m. on the following Monday, and shall be complete as of the close of the calendar year with respect to which the report is filed.

2. Reports to be filed by 42nd day before election. Reports shall be filed not later than 5 p.m. on the 42nd day before the date on which an election is held and shall be complete as of the 49th day before that date. If no report was filed under subsection 1, the report required under this subsection shall cover the 6 months immediately preceding the completion date.

3. Reports to be filed by 7th day before election. Reports shall be filed not later than 5 p.m. on the 7th day before the date on which an election is held and shall be complete as of the 11th day before that date.

4. Expenditure after the 11th day and more than 48 hours before any election. Any expenditure of \$100 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of that contribution or expenditure.

5. Reports to be filed by 42nd day after election. Reports shall be filed not later than 5 p.m.

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§1558. Content of reports

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The reports shall contain the following information and any additional information required by the commission to monitor the activities of political action committees:

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1. Identification of candidates. The names and mailing addresses of any candidate whom the committee supports, intends to support or seeks to defeat. The report shall indicate the office that the candidate is seeking, the political party represented by the candidate, if any, the date of the contest and whether the contest is an election or a primary;

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2. Identification of committees; parties. The names and mailing addresses of any political committee, political action committee or political party supported in any way by the registrant;

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3. Identification of referendum or initiated petition. The referendum or initiated petition which the committee supports or opposes and the names and mailing addresses of the organizations to which expenditures were made;

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4. Itemized expenditures. An itemization of expenditures and the date of each expenditure made to support or oppose any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition. The commission may specify the categories of expenditures which are to be reported to enable the commission to closely monitor the activities of political action committees;

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5. Aggregate expenditures. An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, referendum or initiated petition; and

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6. Identification of contributions. Names and mailing addresses of contributors to the political action committee, the amount contributed by each donor and the date of the following contribution following registration of the committee under section 1553. The information required in this subsection shall be kept separate from the information required in section 1553, subsection 7.

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§1559. Expenditure limitations

Any committee required to register under this chapter shall comply with the following expenditure limitations.

1. Aggregate expenditures. No committee may make expenditures in support of or opposition to the candidacy of one person or to a political committee in an aggregate amount greater than \$5,000 in any election.

2. Prohibited expenditures. No committee may make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

3. Registration requirement. No political action committee may make any expenditures, the total of which exceeds \$50 each calendar year, unless it is registered as required in section 1553.

§1560. Records

Any political action committee that makes an expenditure in the aggregate which exceeds \$50 to any one or more candidates, committees or campaigns in this State shall keep records as provided in this section.

1. Details of records. It shall be the duty of the treasurer of a political action committee to record a detailed account of:

A. All expenditures made to or in behalf of a candidate, campaign or committee;

B. The identity and address of each candidate, campaign or committee;

C. The office sought by a candidate and the district he seeks to represent for which a political action committee made an expenditure; and

D. The date of each expenditure.

2. Receipts. It shall be the duty of the treasurer of a political action committee to retain for a 4-year period all receipts of expenditures made for a candidate, committee or campaign in this State. Receipts may be in the form of cancelled checks.

3. Record of contributions. The treasurer of a political action committee shall keep a record of all contributions to the committee, by name and mailing address, of each donor and the amount and date of the

contribution. This provision does not apply to contributions which are less than \$51 each for a general election, primary election and campaign.

§1561. Dissolution of committees

Whenever any political action committee disbands or determines that obligations will no longer be incurred and no expenditures will be made to any candidate, political committee or political party, or to initiate, support, defeat or influence in any way the outcome of a referendum, initiated petition, election or primary, and the committee has no outstanding obligations, it shall file a termination report with the Secretary of State. If a termination report is not filed, the committee shall continue to file periodic reports as required in this chapter.

§1562. Publication or distribution of statements

Whenever any political action committee makes an expenditure for the purpose of financing communications expressly advocating the initiation, promotion or defeat of a question or candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, these communications shall clearly and conspicuously state the name and address of the political action committee which made or financed the expenditure for the communication.

No person operating a broadcasting station within this State may broadcast any such communication without an oral or visual announcement of the name and address of the political action committee which made or financed the expenditure for the communication and a statement that shall read: "A copy of our report is available from and may be viewed at the office of the Secretary of State."

§1563. Failure to file report on time

There shall be a penalty of \$50 for each day that a report required to be filed under this chapter is late. The commission shall determine whether a report received after the date required by this chapter is late and, if determined to be late, the number of days of lateness.

The commission, upon determining that report is late, shall notify the Secretary of State of the lateness. The Secretary of State shall have initial responsibility for collecting the full amount of any penalty within 30 days after receiving from the com-

mission notice of a report's lateness. The Secretary of State shall have all necessary powers to carry out this responsibility.

Failure to pay the full amount of any penalty levied under this section is a civil violation. Thirty days after receiving notice of the lateness of any report, the Secretary of State shall report to the Attorney General the name of any political action committee which has failed to pay the full amount of any penalty. The Attorney General shall enforce this violation in a civil action to collect the full amount outstanding of the penalty. The action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

§1564. Investigations

The commission may investigate to determine the facts concerning the registration of any political action committee, contributions to and any expenditures by any political action committee for the purposes as defined in this chapter. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. Any political action committee which fails to obey the lawful subpoena of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the Attorney General on behalf of the commission.

1. Investigation requested. Any person may make written application to the commission requesting an investigation concerning the registration of, contributions to and expenditures by any political action committee. The commission shall review the application and shall make the investigation, if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

2. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and shall have all necessary powers to carry out these responsibilities.

3. Attorney General. The Attorney General shall be the counsel for the commission and may examine any witnesses before the commission. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

§1565. Violations

1. Contributions. No political action committee may knowingly make or accept any contribution or make any expenditure in violation of this chapter.

2. False statement in report. No political action committee may make a false statement in any report required by this chapter.

3. Registration. No political action committee may function in this State, unless it is registered in accordance with section 1553 or unless it is accepted by the provisions thereof.

§1566. Penalty

Any violation of any provision of this chapter for which a penalty is not otherwise provided shall be a Class E crime. The Attorney General shall prosecute any such violation.

Effective September 23, 1983.

CHAPTER 366

S.P. 543 - L.D. 1586

AN ACT to Prohibit Harassment of
Hunters, Trappers and Fishermen.

Be it enacted by the People of the State of Maine as follows:

12 MRSA c. 710 is enacted to read:

CHAPTER 710

HARASSMENT OF HUNTERS, TRAPPERS

AND FISHERMEN

§7541. Harassment prohibited

1. Interference with taking. No person may willfully interfere with the lawful hunting, fishing or trapping of a wild animal, wild bird or fish.

2. Disturbing wild animals, wild birds or fish. No person may willfully disturb or attempt to disturb a wild animal, wild bird or fish with the intent to interfere with the hunting, fishing or trapping of them.

2. Director of the Division of Deafness; staff; qualifications. Both the Director of the Division of Deafness and staff must be knowledgeable of the needs of the deaf and hearing impaired and possess the ability to communicate on a meaningful basis with those handicapped persons.

Effective September 19, 1985.

CHAPTER 161

S.P. 205 - L.D. 576

AN ACT to Recodify the Election Laws.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §917, sub-§6, as repealed and replaced by PL 1981, c. 686, §1, is amended to read:

6. Climate for economic development. Promotion of an improved climate for economic development in the State through judicious use of the public and private nature of the foundation to provide objective analysis and develop broad consensus on issues of significance to the economic health of the State; provided that the promotion does not require the foundation to register as a lobbyist employer pursuant to Title 3, chapter 15; and further provided that the foundation does not advocate to the general public a position on a question as defined in Title 21, section 1, subsection 30 Title 21-A, section 1, subsection 34;

Sec. 2. 20-A MRSA §4102, sub-§4, ¶B, as enacted by PL 1983, c. 422, §17, is amended to read:

B. Secondary schools in school administrative districts and community school districts and either elementary or secondary schools in other school administrative units may be closed without voter approval, unless the school board is presented with a written petition, within 30 days of the board's decision to close the school, by 10% of the number of voters in the school administrative unit who voted at the last gubernatorial election, then a special referendum shall be called pursuant to:

(1) Section 1351 for school administrative districts;

(2) Title 30, sections 2061 to 2065, for community school districts, except the school board shall issue a warrant specifying that the municipalities within the district place the petitioned article on the ballot, and shall prepare and furnish the required number of ballots for carrying out the election; and

(3) ~~Title 21~~ Title 21-A and Title 30, respectively, for cities and towns.

Sec. 3. 20-A MRSA §8307, sub-§4, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

4. Referendum. After the public hearing, the school board of the school administrative unit or units requesting a change shall submit the proposal to the voters in their school administrative unit or units in accordance with the relevant provisions for holding elections in sections 1351 to 1354 and in ~~Titles 21~~ Titles 21-A and 30.

Sec. 4. 20-A MRSA §15904, sub-§1, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

1. Councils. In a municipality where the responsibility for final adoption of the school budget is vested in a municipal council by municipal charter or in a town meeting, the vote shall be by secret ballot in accordance with the appropriate provisions set forth in ~~Title 21~~ Title 21-A and Title 30.

Sec. 5. 21 MRSA, as amended, is repealed.

Sec. 6. 21-A MRSA is enacted to read:

TITLE 21-A

ELECTIONS

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER I

DEFINITIONS, CONSTRUCTION AND APPLICATION

§1. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Absentee voter. "Absentee voter" means a person who qualifies under section 751 to cast an absentee ballot.

2. Any election. "Any election" means primary and general elections and referenda, whether regular or special.

3. Ballot label. "Ballot label" means that portion of the cardboard, paper or other material to be placed within the ballot frames of a voting machine containing the items required of a paper ballot.

4. Business day. "Business day" means any day of the calendar year other than a Saturday, Sunday or legal holiday.

5. Candidate. "Candidate" means any person who has filed a petition under either sections 335 and 336 or sections 354 and 355 and has qualified as a candidate by either procedure, or any person who has received contributions or made expenditures or has given his consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate.

6. Caucus. "Caucus" means a meeting of a political party or committee.

7. Challenged ballot. "Challenged ballot" means a ballot cast by one whose eligibility to vote has been questioned.

8. Circulate. "Circulate" means the presenting of a petition to a voter with an accompanying request that the voter sign it.

9. Clerk; municipal clerk. "Clerk" or "municipal clerk" means the clerk or deputy clerk of a municipality.

10. Closed period. "Closed period" means that time period when the registrar may accept only those voter registration applications presented in person.

11. County office. "County office" means the office of judge of probate, register of probate,

county treasurer, register of deeds, sheriff, district attorney or county commissioner.

12. Disputed ballot. "Disputed ballot" means a ballot whose validity has been questioned during the recount process.

13. Distinguishing mark. "Distinguishing mark" means a mark on a ballot of a type or in a place not specifically permitted by this Title, which indicates the apparent intent of the voter to make his ballot distinguishable.

14. Election official. "Election official" means a warden, ward clerk or election clerk.

15. Election year. "Election year" means the calendar year within which a particular election is held.

16. Electoral division. "Electoral division" means an area set off for election purposes. It may include the entire State.

17. Enroll. "Enroll" means to enlist as a member of a political party.

18. Federal office. "Federal office" means the office of the United States Senator or Representative to Congress.

19. General election. "General election" means the regular election of state and county officials occurring biennially in November.

20. Immediate family. "Immediate family" means a person's spouse, parent, child, sister or brother.

21. Incoming voting list. "Incoming voting list" means the list of all of the voters in a municipality which is used by election officials at a voting place to record which voters have been issued a ballot at an election.

22. Major party. "Major party" means a political party polling the greatest or the next greatest number of votes cast for Governor at the last gubernatorial election.

23. Members of the Armed Forces. "Members of the Armed Forces" means:

A. Personnel serving in the Army, Navy, Air Force, Marine Corps or Coast Guard and their spouses and dependents;

B. Members of the Merchant Marine of the United States, except those employed in the inland waterways, and their spouses and dependents;

C. Civilian employees of the United States serving outside the territorial limits of the several states and the District of Columbia, whether or not paid from appropriated federal funds, and their spouses and dependents when accompanying them; and

D. Members of religious groups and welfare agencies serving with or accompanying the Armed Forces, and their spouses and dependents.

24. Minor party. "Minor party" means a political party other than a major party.

25. Municipal committee. "Municipal committee" means a city, town or ward committee of a political party.

26. Municipal officers. "Municipal officers" means the mayor and aldermen or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation.

27. Municipality. "Municipality" means a city, town or plantation.

28. Party. "Party" means a political organization which has qualified to participate in a primary or general election under chapter 5.

29. Peace officer. "Peace officer" means state police officer, local police officer, sheriff, deputy sheriff or constable.

30. Political committee. "Political committee" means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.

31. Population. "Population" means the population determined by the last Decennial Census of the United States.

32. Primary election. "Primary election" means the regular election by the voters of a party for the election of nominees for the general election.

33. Protective counter. "Protective counter" means a separate counter built into a voting machine which records the total number of movements of the operating lever and which cannot be reset.

34. Public official. "Public official" means a person elected or appointed to serve the people.

35. Question. "Question" means any proposition submitted to the voters.

36. Referendum. "Referendum" means an election for the determination of a question.

37. Register. "Register" means to enlist as a voter.

38. Registrar. "Registrar" means the registrar, deputy registrar or the board of registration of voters of a municipality.

39. Regular election. "Regular election" means an election or a referendum held at a regular time prescribed by statute.

40. Residence. "Residence" means that place in which a person's habitation is fixed and to which that person, whenever absent, has the intention to return.

41. Special election. "Special election" means an election other than a regular election.

42. State office. "State office" means the office of Governor, State Senator, Representative to the State Legislature or presidential elector.

43. Street address. "Street address" means the street and number or other designation indicating the location of a person's dwelling place.

44. Township. "Township" means unorganized territory.

45. Treasurer. "Treasurer" means a person appointed by a candidate or a political committee to accept or disburse money to promote or defeat a candidate, party or principle. A person who collects money to be transferred to the treasurer of a candidate or committee is not a treasurer.

46. Uncontested office. "Uncontested office" means an office where, as of the final date for filing primary nomination petitions, either:

A. Only members of one party have filed as candidates for nomination for that office; or

B. Only one unenrolled nominee has filed as a candidate for that office.

47. Voter "Voter" means a person registered to vote.

48. Voting district. "Voting district" means an area set off from another in the same municipality for voting purposes. It includes wards and precincts. In a municipality which has only one voting place, it means the entire municipality.

49. Voting place. "Voting place" means the building in which ballots are cast at an election.

50. Warden. "Warden" means the presiding officer at a voting place.

51. Write-in candidate. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect him.

§2. Delegation of authority

When this Title requires the performance of a duty by an official, he may delegate the duty to another under his supervision, if it is ministerial.

§3. Signatures and names

When this Title requires a name or signature on a document, immaterial irregularities shall not invalidate the name or signature if the identity of the person named is clear to the public official charged with reviewing that document.

1. Immaterial irregularities. Immaterial irregularities include, but are not limited to, misspelling, inclusion or omission of initials and substitution of initials for given names.

2. Application. This policy shall apply to circumstances including, but not limited to, the following:

A. Absentee ballot applications;

B. Absentee ballot affidavits;

C. Signatures on petitions; and

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in the following order: People's veto questions; initiated measures; bond issues; constitutional amendments; and other legislatively proposed referenda. Within each group, questions must be arranged in a random order determined by a selection process conducted in public. All ballot questions must be numbered sequentially.

CHAPTER 13

CAMPAIGN REPORTS AND FINANCES

SUBCHAPTER I

GENERAL PROVISIONS

§1001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

2. Election. "Election" means any primary, general or special election for state or county offices.

3. Person. "Person" means an individual, committee, firm, partnership, corporation, association, group or organization.

§1002. Meetings of commission

The commission shall meet in Augusta for the purposes of this chapter at least 4 times during any year in which primary and general elections are held. The commission shall meet at other times on the call of the Secretary of State, the Speaker of the House, the President of the Senate, the chairman or a majority of the members of the commission, provided that all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

§1003. Investigations by commission

1. Investigations. The commission may investigate to determine the facts concerning the registration of any political action committee and contributions by or to and expenditures by any person, candidate or political action committee. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. Any person or political action committee who fails to obey the lawful subpoena

of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the Attorney General on behalf of the commission.

2. Investigations requested. Any person may apply in writing to the commission requesting an investigation concerning the registration of any political action committee and contributions by or to and expenditures by any person, candidate or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

3. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and shall have all necessary powers to carry out these responsibilities.

4. Attorney General. The Attorney General is the counsel for the commission and may examine any witnesses before the commission. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

§1004. Violations

The violation of any of the following subsections is a Class E crime.

1. Contributions and expenditures. No person, candidate or political action committee may knowingly make or accept any contribution or make any expenditure in violation of this chapter.

2. False statements. No person, candidate or political action committee may make a false statement in any report required by this chapter.

3. Contributions in another's name. No person may make a contribution in the name of another person or knowingly permit his name to be used to accomplish such a contribution, and no person may knowingly accept a contribution made by one person in the name of another person.

4. Registration; political action committees. No political action committee required to be registered under section 1053 may operate in this State unless it is so registered.

SUBCHAPTER II

REPORTS ON CAMPAIGNS FOR OFFICE

§1011. Application

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. This subchapter also applies to candidates for federal offices for the purposes of section 1017, subsection 1.

§1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Clearly identified. "Clearly identified," with respect to a candidate, means that:

A. The name of the candidate appears;

B. A photograph or drawing of the candidate appears; or

C. The identity of the candidate is apparent by unambiguous reference.

2. Contribution. The term "contribution:"

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state or county office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a candidate or a political committee which are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons which are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$50 with respect to any election;

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$50 with respect to any election;

(4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers his personal services to a candidate, if the cumulative amount of these expenses does not exceed \$50 with respect to any election; or

(5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution incurred by the committee with respect to a printed slate card, sample ballot or other printed listing of 3 or more candidates for any political office.

3. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or

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anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure; or

(3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee or candidate;

(2) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$50 with respect to any election;

(5) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers his personal services to a candidate, if the cumulative amount of these expenses does not exceed \$50 with respect to any election;

(6) Any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;

(7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any political office for which an election is held; or

(8) The use or distribution of any communication, as described in section 1014, prepared for a previous election and fully paid for during that election campaign which was not used or distributed in that previous election.

§1013. Treasurer; political committees

1. Candidates. A candidate may accept contributions personally or make or authorize expenditures personally. A candidate may appoint a treasurer to accept contributions or to make or authorize expenditures. A candidate who appoints a treasurer must inform the commission of the name and address of his treasurer, the name and address of the candidate making the appointment and the treasurer's term of office, if any, within 7 days after the appointment.

2. Authorized political committees. A candidate may authorize one or more political committees to promote the candidate. Each of these political committees must appoint a treasurer before accepting any contributions or making or authorizing any expenditures. Within 7 days after that appointment, the political committee must inform the commission of the name and address of its treasurer, the name or title of the committee making the appointment and the treasurer's term of office. In addition to the registration of its treasurer, a political committee authorized by a candidate shall submit the names and addresses of all of its officers to the commission, whether or not the committee accepts any contributions or makes or authorizes any expenditures.

3. Other political committees. A political committee which is not authorized by a candidate, but which accepts any contributions or makes or authorizes any expenditures to promote or defeat a candidate or candidates, must appoint a treasurer before

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accepting any contributions or making or authorizing any expenditures. Within 7 days after that appointment, the political committee must inform the commission of the name and address of its treasurer, the name or title of the committee making the appointment, the name of the candidate or candidates it intends to promote or defeat and the treasurer's term of office. In addition to the registration of its treasurer, such a political committee shall submit the names and addresses of all of its officers to the commission.

4. Party committees. The state, district and county committees of parties shall submit to the commission the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 days after the appointment, election or hiring of these persons.

The state committee of a party may submit a consolidated report, including the information required under this subsection for the district, county and municipal committees of that party.

§1014. Publication or distribution of political statements

1. Authorized by candidate. Whenever any person makes an expenditure to finance communications expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication.

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within

this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication.

§1015. Limitations on contributions and expenditures

1. Individuals. No individual may make contributions to a candidate in support of the candidacy of one person, aggregating more than \$1,000 in any election. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse.

2. Committees; corporations; associations. No political committee, other committee, corporation or association may make contributions to a candidate, in support of the candidacy of one person, aggregating more than \$5,000 in any election.

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse.

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

5. Other contributions and expenditures. Expenditures made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents are considered to be a contribution to that candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part,

of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

6. Prohibited expenditures. A candidate, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

§1016. Records

Each treasurer or each candidate shall keep detailed records of all contributions received and of each expenditure which the treasurer or candidate makes or authorizes, as provided in this section.

1. Segregated funds. All funds of a political committee must be segregated from, and may not be commingled with, any personal funds of officers, members or associates of the committee.

2. Account of contributions. Every person who receives a contribution in excess of \$10 for a candidate or a political committee shall give the treasurer or candidate a detailed account of the contribution on demand of the treasurer or candidate and in any event within 5 days after receiving the contribution. This account must include the amount of the contribution, the name and address of the person making the contribution and the date on which the contribution was received.

3. Record keeping. A treasurer or a candidate shall keep a detailed and exact account of:

A. All contributions made to or for the candidate or committee;

B. The name and address of every person making a contribution in excess of \$10, the date and amount of that contribution and, if a person's contributions in any report filing period aggregate more than \$50, the account must include the contributor's occupation and his principal place of business, if any. If the contributor is the candidate or a member of the candidate's immediate family, the account must also state the relationship. For purposes of this paragraph, "filing period" is as provided in section 1017, subsection 3, paragraph A;

C. All expenditures made by or on behalf of the committee or candidate; and

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure.

4. Receipts preservation. A treasurer or a candidate shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of a political committee or a candidate and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any election exceeds \$50. The treasurer or candidate shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court.

§1017. Reports by candidates

1. Federal candidates. Each candidate for federal office and the treasurer of the political committee or committees of each candidate shall file with the commission a copy of the complete report required of them under federal law on the same date that those reports are required to be filed under federal law.

2. Gubernatorial candidates. Each candidate for the office of Governor or the candidate's treasurer and the treasurer of each political committee authorized by the candidate shall file reports with the commission as follows.

A. In any calendar year, other than a gubernatorial election year, in which the candidate and the candidate's political committee or committees received contributions in excess of \$1,000 or made expenditures in excess of \$1,000, reports shall be filed not later than 5 p.m. on January 15th of the following calendar year and must be complete as of the close of the calendar year for which the report is filed.

B. Reports shall be filed not later than 5 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that date. If no report was filed under paragraph A, the report required under this paragraph must cover the 6 months immediately preceding the completion date.

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C. Reports shall be filed not later than 5 p.m. on the 7th day before the date on which an election is held and must be complete as of the 11th day before that date.

D. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of that contribution or expenditure.

E. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the entire election campaign as of the 35th day after that date.

F. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph E shall be reported to the commission on the first day of each quarter of the State's fiscal year, until the surplus is disposed of or the deficit is liquidated. The reports may either be filed in person with the commission on that date or postmarked by that time on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

G. Unless otherwise specified in this subsection, reports must be complete back to the completion date of the previous report. The report described in paragraph E, if filed with respect to a primary election, is considered a previous report in relation to reports concerning a general election.

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor shall be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election.

3. Other candidates. Each candidate for state or county office, other than the office of Governor, or the candidate's treasurer and the treasurer of each political committee authorized by a candidate shall file reports with the commission as follows.

A. Reports shall be filed not later than 5 p.m. on the 7th day before the date on which an elec-

tion is held and must be complete as of the 11th day before that date. The first reports filed in a year in which an election is held must cover the 6 months immediately preceding the completion date. Other reports must be complete for the filing period. A filing period is that period of time from one completion date to the next completion date.

B. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of that contribution or expenditure.

C. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph C shall be reported to the commission on the first day of each quarter of the State's fiscal year, until the surplus is disposed of or the deficit is liquidated. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. The reports may be either filed in person with the commission on that date or postmarked by that time on that date.

E. Reports with respect to a candidate who seeks nomination by petition shall be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III, shall file a campaign report under this section within 15 days after his appointment and thereafter on the appropriate schedule under this section. The commission shall send notification of this requirement and report forms to the candidate immediately upon his appointment.

5. Content. A report required under this section must contain the itemized accounts of contributions received and the name, address, occupation and prin-

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cipal place of business, if any, of each person who has made a contribution aggregating in excess of \$50 for that report filing period. It must contain the itemized expenditures made or authorized, the purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan of money in an aggregate amount of \$500 or more to a candidate by a financial institution made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A.

6. Forms. Reports required by this section must be on forms prescribed by the commission, prepared by the Secretary of State and sent by the commission to the candidate at least 7 days before the filing date for the report. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports, failure to receive forms by mail does not excuse committees, candidates and other persons who must file reports from otherwise obtaining the forms.

§1018. Reports by party committees

1. State committee; federal reports. The state committee of each party shall file with the commission a copy of the complete report required of them under federal law on the same date that those reports are required to be filed under federal law.

2. Party committee. When a state, district, county or municipal committee of a party makes contributions or expenditures, aggregating in excess of \$50 in an election, that expressly advocate the election or defeat of a candidate or candidates, other than by contribution to a candidate or a candidate's authorized political committee, the party committee making the contribution or expenditure shall file a report with the commission.

A. Reports required by this subsection in relation to a candidate for Governor shall be filed on the same dates on which reports for gubernatorial candidates are to be filed under section 1017, subsection 2. Reports required by this subsection in relation to a candidate for state or county office, other than Governor, shall be filed on the same dates on which reports for these candidates are to be filed under section 1017, subsection 3.

B. This report must contain an itemized account of each such contribution or expenditure aggregating in excess of \$50 in any election, the purpose of each and the name of each payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized.

C. Reports required by this subsection must be on forms prescribed by the commission, prepared by the Secretary of State and sent by the commission to the candidate at least 7 days before the filing date for the report. Persons filing these reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports, failure to receive forms by mail does not excuse committees, candidates and other persons who must file reports from otherwise obtaining the forms.

§1019. Reports by other persons

Each person, other than a candidate, a candidate's authorized political committee or a party committee, who makes contributions or expenditures, aggregating in excess of \$50 in an election, that expressly advocate the election or defeat of a clearly identified candidate, other than by contribution to a candidate or a candidate's authorized political committee, shall file a report with the commission.

1. Filing dates. Reports required by this section in relation to a candidate for Governor shall be filed on the same dates on which reports for gubernatorial candidates are to be filed under section 1017, subsection 2. Reports required by this section in relation to a candidate for state or county office, other than the office of Governor, shall be filed on the same dates on which reports for those candidates are to be filed under section 1017, subsection 3.

2. Content. This report must contain an itemized account of each contribution or expenditure aggregating in excess of \$50 in any election, the purpose of each and the name of each payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of a candidate. Any membership or-

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ganization or corporation which makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate must report any expenditures aggregating in excess of \$50 for such a communication in any election, whether or not the communication is defined as an expenditure under section 1012, subsection 5, paragraph C.

3. Forms. Reports required by this section must be on forms prescribed by the commission and prepared by the Secretary of State and, in the case of quarterly reports, sent by the commission to the person at least 7 days before the filing date for the report. Persons filing these reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports, failure to receive forms by mail does not excuse committees, candidates and other persons who must file reports from otherwise obtaining the forms.

\$1020. Failure to file report on time

The commission shall determine whether a report received after the date required by this subchapter is late and, if determined to be late, the number of days of lateness. If the reason for the late filing is that the forms sent to the candidate by the commission were not postmarked at least 7 days before the filing date, the period for filing shall be increased by the deficiency without penalty.

1. Penalty. There is a penalty of \$10 for each business day that a report required to be filed under this subchapter is late.

2. Notice of lateness. A notice of lateness shall be sent to candidates and treasurers registered with the commission whose reports are not received within 2 days of the filing deadline. That notice shall be sent on the 3rd day following the deadline.

3. Grace period. A late report filed within 10 days of any deadline, except a report required to be filed 7 days before an election, is not subject to penalty. Reports filed after this grace period are subject to penalties from the original filing deadline.

4. Enforcement and collection. The commission, upon determining that a report is late, shall notify the Secretary of State of the lateness. The Secretary of State has the initial responsibility for collecting the full amount of any penalty within 30 days af-

ter receiving notice of a report's lateness from the commission. The Secretary of State shall have all necessary powers to carry out this responsibility.

Failure to pay the full amount of any penalty levied under this section is a civil violation. Thirty days after receiving notice of the lateness of any report, the Secretary of State shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full amount outstanding of the penalty. This action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of South Kennebec.

SUBCHAPTER III

REPORTS ON REFERENDUM CAMPAIGNS

§1031. Application

This subchapter applies to campaigns for the initiation, promotion or defeat of questions.

§1032. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Campaign. "Campaign" means a campaign for the initiation, promotion or defeat of a question, including:

A. The referendum procedure under the Constitution of Maine, Article IV, Part Third, Section 17;

B. The initiative procedure under the Constitution of Maine, Article IV, Part Third, Section 18;

C. An amendment to the Constitution of Maine under the Constitution of Maine, Article X, Section 4;

D. Legislation expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19; and

E. The ratification of the issue of bonds by the State or any agency of the State.

2. Contribution. The term "contribution:"

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing a campaign or referendum;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a person for the purpose of influencing a campaign or referendum which are transferred to that person from another person, a political committee or other source; and

(4) The payment, by any person other than a person required to make a report under this chapter, of compensation for the personal services of other persons which are rendered to a campaign without charge for any such purpose; and

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a campaign;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual in rendering voluntary personal services for campaign related activities, if the cumulative value of these activities by the individual on behalf of any campaign does not exceed \$50 with respect to any campaign;

(3) The sale of any food or beverage by a vendor for use in a campaign at a charge less than the normal comparable charge, if the charge for use in a campaign is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$50 with respect to any campaign; or

(4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers his personal services to a cam-

paigh if the cumulative amount of these expenses does not exceed \$50 with respect to any campaign.

3. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a campaign or referendum;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditures; and

(3) The transfer of funds to another person for purposes of influencing a campaign or referendum; and

B. Does not include:

(1) Nonpartisan activity designed to encourage individuals to register to vote, or to vote;

(2) Any communication by any membership organization or corporation to its members or stockholders, if the membership organization or corporation is not organized primarily for the purpose of influencing a campaign or referendum;

(3) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual in rendering voluntary personal services for campaign-related activities, if the cumulative value of these activities by the individual on behalf of any campaign does not exceed \$50 with respect to any campaign; or

(4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers his personal services to a campaign if the cumulative amount of these expenses does not exceed \$50 with respect to any campaign.

§1033. Committee

Any political committee which is formed with respect to a campaign must appoint a treasurer before accepting any contributions or making any expendi-

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tures. Within 7 days after that appointment, the committee must inform the commission of the name and address of its treasurer, the name or title of the committee making the appointment and the treasurer's term of office. In addition to the registration of its treasurer, the committee shall submit the names and addresses of all of its officers to the commission.

§1034. Publication or distribution of statements

Whenever any person makes an expenditure to finance communications expressly advocating the initiation, promotion or defeat of a question through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication.

No person operating a broadcasting station within this State may broadcast any such communication without an oral or visual announcement of the name of the person who made or financed the expenditure for the communication.

§1035. Records

Any person who accepts contributions aggregating in excess of \$50 or makes expenditures in excess of \$50 with respect to any campaign shall keep records as provided in this section.

1. Segregated funds. All funds of a committee must be segregated from, and may not be commingled with, any personal funds of officers, members or associates of the committee.

2. Account of contributions. Every person who receives a contribution in excess of \$10 for a political committee shall give the treasurer a detailed account of the contribution on demand of the treasurer, and in any event within 5 days after receiving the contribution. This account must include the amount of the contribution, the name and address of the person making the contribution and the date on which the contribution was received.

3. Record keeping. It is the duty of a person or a treasurer to keep a detailed and exact account of:

A. All contributions made to or for a campaign or to or for a committee;

B. The name and address of every person making a contribution in excess of \$10, and the date and amount of the contribution. If a person's contributions in any campaign aggregate more than \$50, the account must also include the contributor's occupation and principal place of business, if any;

C. All expenditures made by or on behalf of the campaign or committee; and

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure.

4. Receipts preservation. It is the duty of a person or treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a campaign in excess of \$50, and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any campaign exceeds \$50. The person shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the campaign or referendum to which they pertain, unless otherwise ordered by the commission or a court.

§1036. Reports

1. Who must file. Any person who accepts contributions aggregating in excess of \$50 or makes expenditures in excess of \$50 with respect to any campaign shall file a report with the commission, as provided in this section. Any person who is required under this subsection to file a report shall file a report for each filing period in subsection 2, whether or not contributions or expenditures are in excess of \$50 in any one period.

2. Filing dates. Reports shall be filed with the commission according to the schedule in this section. A report must cover the 6 months immediately preceding the reporting date or the period since the completion date of a previous report on the same campaign.

A. In the case of the referendum procedure under the Constitution of Maine, Article IV, Part Third, Section 17, and of the initiative procedure under the Constitution of Maine, Article IV,

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Part Third, Section 18, a report shall be filed with the commission not later than 5 p.m. on the 14th day after the final date provided in the Constitution of Maine for filing petitions under the appropriate procedure and must be complete as of that final date.

B. A report shall be filed with the commission not later than 5 p.m. on the 42nd day before the date of the referendum and must be complete as of the 49th day before the date of the referendum. This requirement applies to each campaign defined in section 1032.

C. A report shall be filed with the commission not later than 5 p.m. on the 7th day before the date of the referendum and must be complete as of the 11th day before the date of the referendum. This requirement applies to each campaign defined in section 1032.

D. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any referendum, shall be reported within 48 hours of the contribution or expenditures. This requirement applies to each campaign defined in section 1032.

E. A report shall be filed not later than 5 p.m. on the 42nd day after the date on which a referendum is held and must be complete for the entire campaign as of the 35th day after that date. This requirement applies to each campaign defined in section 1032.

F. The disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph E shall be reported to the commission on the first day of each quarter of this State's fiscal year, until the surplus is disposed of or the deficit is liquidated. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

3. Content. A report required under this section must contain the itemized accounts of contributions received and the name, address, occupation and principal place of business, if any, of each person who has made a contribution aggregating in excess of \$50 for that campaign. It must contain the itemized expenditures made or authorized, the purpose of each expenditure and the name of each payee and creditor. Total contributions of less than \$500, except when

C. Any funds received by a political action committee which are to be transferred to any candidate, committee, campaign or organization for the purpose of promoting, defeating or initiating a candidate, referendum, political party or initiative in this State; or

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee which is used by the political action committee to promote, defeat or initiate a candidate, campaign political party, referendum or initiated petition in this State.

4. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift or money or anything of value, made for the purpose of influencing the nomination or election of any person to political office; or for the initiation, support or defeat of a campaign, referendum or initiative in this State;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

(3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee or candidate;

(2) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primar-

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(4) The use of real or personal property
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action committee in rendering voluntary per-
sonal services for candidate-related activi-
ties, if the cumulative value of these ac-
tivities by the political action committee
on behalf of any candidate does not exceed
\$50 with respect to any election;

(5) Any unreimbursed travel expenses in-
curred and paid for by a political action
committee which volunteers personal services
to a candidate, if the cumulative amount of
these expenses does not exceed \$50 with re-
spect to any election; and

(6) Any communication by any political ac-
tion committee member which is not made for
the purpose of influencing the nomination
for election, or election, of any person to
state or county office.

5. Political action committee. The term "polit-
ical action committee:"

A. Includes:

(1) Any separate or segregated fund estab-
lished by any corporation, membership orga-
nization, cooperative or labor organization
whose purpose is to influence the outcome of
an election including a candidate or ques-
tion; and

(2) Any person which serves as a funding
and transfer mechanism and by which moneys
are expended to advance, promote, defeat,
influence in any way or initiate a candi-
date, campaign, political party, referendum
or initiated petition in this State; and

B. Does not include:

(1) A candidate or a candidate's treasurer
under section 1013, subsection 1;

(2) A candidate's authorized political com-
mittee under section 1013, subsection 2; or

contributions in any campaign by one person aggregating in excess of \$50 are included, and total expenditures of less than \$500 need not be itemized.

4. Forms. Reports required by this subchapter must be on forms prescribed by the commission and prepared by the Secretary of State. Persons filing reports may use additional pages if necessary, but those pages must be the same size as the pages of the form. Although the commission mails the forms for required reports, failure to receive forms by mail does not excuse persons required to file reports from otherwise obtaining the forms.

§1037. Failure to file report on time

The commission shall determine whether a report received after the date required by this subchapter is late and, if determined to be late, the number of days of lateness.

1. Penalty. There is a penalty of \$10 for each business day that a report required to be filed under this subchapter is late.

2. Enforcement and collection. The commission, upon determining that a report is late, shall notify the Secretary of State of the lateness. The Secretary of State has the initial responsibility for collecting the full amount of any penalty within 30 days after receiving notice of a report's lateness from the commission. The Secretary of State shall have all necessary powers to carry out this responsibility.

Failure to pay the full amount of any penalty levied under the provisions of this section is a civil violation. Thirty days after receiving notice of the lateness of any report, the Secretary of State shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full amount outstanding of the penalty. The action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

SUBCHAPTER IV

REPORTS BY POLITICAL ACTION COMMITTEES

§1051. Application

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This subchapter applies to the activities of political action committees organized in this State which expend in excess of \$50 in any one calendar year for the election of state or county officers, or for the support or defeat of any campaign, as defined in this subchapter.

§1052. Definitions.

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Campaign. "Campaign" means any course of activities for a specific purpose such as the initiation, promotion or defeat of a candidate or question, including:

A. The referendum procedure under the Constitution of Maine, Article IV, Part Third, Section 17;

B. The initiative procedure under the Constitution of Maine, Article IV, Part Third, Section 18;

C. An amendment to the Constitution of Maine under Article X, Section 4;

D. Legislation expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19; and

E. The ratification of the issue of bonds by the State or any agency thereof.

2. Committee. "Committee" means any political action committee, as defined in this subchapter, and includes any agent of a political committee.

3. Contribution. "Contribution" includes:

A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;

(3) A party committee under section 1013, subsection 4.

§1053. Registration

Every political action committee which makes expenditures in excess of \$50 in any single calendar year to initiate, support, defeat or influence in any way a campaign, a referendum, initiated petition, candidate, political committee or another political action committee must register with the commission on forms prescribed by the commission. These forms must include the following information and any additional information reasonably required by the commission or the Secretary of State to monitor the activities of political action committees in this State under this subchapter.

1. Identification of committee. The names and mailing addresses of the committee, its treasurer and its principal officers;

2. Status. A statement whether the political action committee is a continuing one;

3. Depository of funds. The names and addresses of the depositories in which funds of the committee are kept and the account numbers of each depository account;

4. Form of organization. The form or structure of organization, including cooperatives, corporations, voluntary associations, partnerships or any other structure by which the committee functions. The date of origin or incorporation must also be specified;

5. Assets. The total assets of the committee available to influence elections in this State at the time of registration to be itemized and to include deposits in financial institutions, real property, personal property, investments, cash and any other form of wealth available to the committee;

6. Statement of support or opposition. A statement indicating the positions of the committee, support or opposition, with respect to a candidate, political committee, referendum, initiated petition or campaign, if known at the time of registration. If a committee has no position on a candidate, campaign or issue at the time of registration, the committee must inform the commission as soon as the committee knows this information; and

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7. Contributions to committee. The names and mailing addresses of contributors who donate in excess of \$50 each year to the committee with amount or value of each contribution at the time of registration. Any person who makes contributions on an installment basis, the total of which exceeds \$50 in the calendar year, is considered a contributor to be identified under this subsection.

§1054. Appointment of treasurer

Any political action committee required to register under section 1053 must appoint a treasurer before making any expenditure, as defined in this chapter. The treasurer shall retain, for a minimum of 4 years, all receipts, including cancelled checks, of expenditures made in support of or in opposition to a campaign, political committee, political action committee, referendum or initiated petition in this State.

§1055. Publication or distribution of statements

Whenever any political action committee makes an expenditure to finance communications expressly advocating the initiation, promotion or defeat of a question or candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, these communications must clearly and conspicuously state the name and address of the political action committee which made or financed the expenditure for the communication.

No person operating a broadcasting station within this State may broadcast any such communication without an oral or visual announcement of the name and address of the political action committee which made or financed the expenditure for the communication and statement that reads: "A copy of our report is available from and may be viewed at the office of the Secretary of State."

§1056. Expenditure limitations

Any committee required to register under this chapter shall comply with the following expenditure limitations.

1. Aggregate expenditures. No committee may make expenditures in support of or opposition to the candidacy of one person or to a political committee

in an aggregate amount greater than \$5,000 in any election.

2. Prohibited expenditures. No committee may make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

§1057. Records

Any political action committee that makes expenditures which aggregate in excess of \$50 to any one or more candidates, committees or campaigns in this State shall keep records as provided in this section. Records required to be kept under subsections 1, 2 and 3 shall be retained by the political action committee until 10 days after the next election following the election to which the records pertain.

1. Details of records. The treasurer of a political action committee must record a detailed account of:

A. All expenditures made to or in behalf of a candidate, campaign or committee;

B. The identity and address of each candidate, campaign or committee;

C. The office sought by a candidate and the district he seeks to represent, for candidates which a political action committee has made an expenditure to or in behalf of; and

D. The date of each expenditure.

2. Receipts. The treasurer of a political action committee must retain all receipts of expenditures made for a candidate, committee or campaign in this State. Receipts may be in the form of cancelled checks.

3. Record of contributions. The treasurer of a political action committee must keep a record of all contributions to the committee, by name and mailing address, of each donor and the amount and date of the contribution. This provision does not apply to contributions which do not exceed \$50 each for a general election, primary election and campaign.

§1058. Reports, qualifications for filing

Any political action committee that expends in excess of \$50 on any one or more campaigns for the office of Governor, for state or county office or for

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the support or defeat of a referendum or initiated petition shall file a report on its activities in that campaign with the commission on forms as prescribed by the commission. Any political action committee required under this section to file a report shall file the report for each filing period under section 1059, whether or not the expenditures are in excess of \$50 in any one period.

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§1059. Reports; filing requirements

Political action committees required under section 1053 to file reports shall do so in compliance with this section. All reports must be filed no later than 5 p.m. on the filing deadline.

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1. Periodic reports. During the year in which an election is held, committees shall file reports as required by this subsection. The reports required in paragraphs A to C must contain: Itemized expenditures required by the commission to closely monitor the activities of political action committees; aggregate expenditures for the periods between the filing dates specified; and cumulative aggregated expenditures which must include all preceding reporting periods. The commission may accept computer printout sheets that contain the information required by this chapter.

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A. Primary election reports shall be filed:

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(1) On January 22nd and must be complete as of January 15th. This report must cover all previous expenditures made by the committee to influence, in any way, the outcome of a primary election;

(2) On April 8th and must be complete as of April 1st;

(3) On the 7th day before the date on which a primary election is held and must be complete as of the 11th day before that date; and

(4) On July 22nd and must be complete as of July 15th. This report must aggregate all expenditures made to influence, in any way, the outcome of a primary election.

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B. General election reports shall be filed:

(1) On January 22nd and must be complete as of January 15th. This report must cover all previous expenditures made by the committee

to influence, in any way, the outcome of a general election;

(2) On April 8th and must be complete as of April 1st;

(3) On July 22nd and must be complete as of July 15th;

(4) On October 8th and must be complete as of October 1st;

(5) On the 7th day before the date on which a general election is held and must be complete as of the 11th day before that date; and

(6) On December 22nd and must be complete as of December 15th. This report must aggregate all expenditures made to influence, in any way, the outcome of a general election.

C. Reports of spending to influence referenda, initiative, bond issues or constitutional amendment elections shall be filed:

(1) On January 22nd and must be complete as of January 15th. This report must cover all previous expenditures made by the committee to influence, in any way, the outcome of a ballot issue campaign;

(2) On April 8th and must be complete as of April 1st;

(3) On July 22nd and must be complete as of July 15th;

(4) On October 8th and must be complete as of October 1st;

(5) On the 7th day before the date on which a ballot question election is held and must be complete as of the 11th day before that date; and

(6) On December 22nd and must be complete as of December 15th. This report must aggregate all expenditures made to influence, in any way, the outcome of a ballot question campaign.

2. Annual reports. If a political action committee makes expenditures in excess of \$50 to influ-

ence, in any way, the outcome of an election in a year other than the year in which that election is held, the committee shall file an annual report on forms prescribed by the commission. That report is due on January 22nd of the next calendar year and must be complete as of the close of the calendar year during which the expenditures were made.

3. Report of expenditures made after the 11th day and more than 48 hours before any election. Any expenditures of \$100 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of that expenditure.

4. Special election reports. If a special election is held, a political action committee which makes expenditures in excess of \$50 to influence, in any way, the outcome of that special election shall file reports on forms prescribed by the commission. Special election reports shall be filed:

A. On the 42nd day before the date on which the special election is held and must be complete as of the 49th day before that date. This report must cover all previous expenditures made by the committee to influence, in any way, the outcome of the special election;

B. On the 7th day before the date on which the special election is held and must be complete as of the 11th day before that date; and

C. On the 42nd day after the date on which the special election is held and must be complete as of the 35th day after that date. This report must aggregate all expenditures made to influence, in any way, the outcome of the special election.

§1060. Content of reports

The reports must contain the following information and any additional information required by the commission to monitor the activities of political action committees:

1. Identification of candidates. The names and mailing addresses of any candidate whom the committee supports, intends to support or seeks to defeat. The report must indicate the office that the candidate is seeking, the political party represented by the candidate, if any, the date of the contest and whether the contest is an election or a primary;

2. Identification of committees; parties. The names and mailing addresses of any political committee or political party supported in any way by the registrant;

3. Identification of referendum or initiated petition. The referendum or initiated petition which the committee supports or opposes and the names and mailing addresses of the organizations to which expenditures were made;

4. Itemized expenditures. An itemization of expenditures and the date of each expenditure made to support or oppose any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition. The commission may specify the categories of expenditures which are to be reported to enable the commission to closely monitor the activities of political action committees;

5. Aggregate expenditures. An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, referendum or initiated petition; and

6. Identification of contributions. Names and mailing addresses of contributors who have given more than \$50 to the political committee after the committee has registered under section 1053, the amount contributed by each donor and the date of the contribution. The information already reported as required by section 1053, subsection 7, should not be duplicated.

§1061. Dissolution of committees

Whenever any political action committee disbands or determines that obligations will no longer be incurred and no expenditures will be made to any candidate, political committee or political party, or to initiate, support, defeat or influence in any way the outcome of a referendum, initiated petition, election or primary, and the committee has no outstanding obligations, it must file a termination report with the Secretary of State. If a termination report is not filed, the committee shall continue to file periodic reports as required in this chapter.

§1062. Failure to file report on time

The commission shall determine whether a report received after the date required by this subchapter

4. Violation. The posting of written political material under this section is not a violation of Title 21, section 1575-A Title 21-A, section 31, subsection 3, or Title 21, section 1579, subsection 7 Title 21-A, section 674, subsection 1, paragraph C.

Effective September 19, 1985.

CHAPTER 162

S.P. 414 - L.D. 1144

AN ACT to Amend the Department of
Environmental Protection Laws.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §152, sub-§6, as enacted by PL 1983, c. 796, §1, is amended to read:

6. Land use laws. Original jurisdiction, concurrent with that of the Superior Court, to grant equitable relief in proceedings involving alleged violations of a local land use ordinance or regulation or a state land use statute or regulation, which shall include, but shall not be limited to, the following: The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A; minimum lot size law, Title 12, sections 4807 to 4807-G; shoreland zoning ordinances adopted pursuant to Title 12, sections 4811 to 4817; the Alteration of Rivers, Streams and Brooks law, Title 12, sections 7776-7780 7776 to 7780; the plumbing and subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to Title 22, section 42; laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648; local ordinances pursuant to Title 22, section 2642; local ordinances adopted pursuant to Title 30, section 1917; local building codes adopted pursuant to Title 30, sections 1917 and 2151; Title 30, chapter 215, subchapter I, automobile junkyards and subchapter X, regulation and inspection of plumbing; Title 30, section 4359, malfunctioning domestic sewage disposal units; Title 30, section 4956, the subdivision law, and local subdivision ordinances adopted pursuant to Title 30, section 1917 and subdivision regulations adopted pursuant to Title 30, section 4956; local zoning ordinances adopted